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IN THE

Supreme Court of the United States

April Term, 1970.

No. [redacted] 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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INDEX

	PAGE
Appendix A	1
Appendix B	85
Appendix C	141
Appendix D	141
Appendix E	143
Appendix F	160
Appendix G	161
Appendix H	166
Appendix I	168

APPENDIX A.

(3195a) ADJUDICATION

December 16, 1966. ALEXANDER, J.

This action in equity was commenced by the filing of a Complaint in Equity on February 1, 1963, in the name of St. Michael and Archangel Russian Orthodox Greek Catholic Church (hereinafter referred to as St. Michael's Church) of Philadelphia, Pennsylvania, a Pennsylvania Corporation, by and in the names of the Very Reverend Alexander Fedoronko, Pastor and Rector of the said church, and Paul Muriańka, Warden of the said church.

The original defendants named in the complaint were Peter Uhniat, John Sidorsky, John Peramus, Jr., William Yurkow, Paul Kaczmarczik, John Harwan, William Yuschak and Andrew Shast, who were all members of the plaintiff church.

The following added defendants, who were also members of St. Michael's Church, were joined in the case by a petition and a rule absolute thereon, after the action had been commenced: John Patrick, Boris Smarkola, Eugene Paul, Thomas Melnick, Harry J. Bronsky, John Lahovin, Wasyl Pyrz and Andrew Coss.

The plaintiff's complaint in equity sought the following injunctive relief: that defendant Peter Uhniat be enjoined for participating and attending any church functions, meetings and services; that defendant John Sidorsky be enjoined from acting or purporting to act as Church Treasurer; that defendants John Peramus, Jr., William Yurkow, Paul Kaczmarczik, John Harwan, William Yuschak and Andrew Shast be enjoined from acting as or purporting to act as officers of the Parochial Council of the church; and that all defendants be enjoined from taking any action which might interfere with the religious life of the church or its members.

On February 1, 1963, the court entered a temporary injunction against the defendants upon the strength of various affidavits and other documents which were attached to the complaint (3196a) in equity and which averred that the defendants, in concert with other members of St. Michael's Church, had conducted an illegal meeting at the church premises, 335 Fairmount Avenue, Philadelphia, Pennsylvania, on January 27, 1963, and had purportedly been elected officers and members of the Parochial Council of St. Michael's Church, the ruling body of laymen of the said church.

Thereafter, on March 12, 1963, following a hearing in court upon the plaintiffs' requests for equitable relief, the court entered a preliminary injunction against the defendants enjoining them from exercising any rights and duties of any office or as members of the Parochial Council of the church and enjoining them from interfering with others who were acting as officers and members of the said Parochial Council. The preliminary injunction made specific restraints upon defendants Peter Ulmiat and John Sidorsky and it released John Pecanus, Jr., as a defendant in the case.

An issue regarding the hierarchical jurisdiction or affiliation of St. Michael's Church was first raised inferentially in the plaintiffs' complaint in paragraph 6 thereto in which it was alleged that defendant Peter Ulmiat ". . . was expelled from membership on the Church Council (on August 21, 1962) and placed under interdict by decision of the Diocesan Archbishop (Dimitry), supplemented by a Resolution of Archbishop Leonty, Metropolitan of the Russian Orthodox Greek Catholic Church of America, and confirmed by the Great Council of Bishops on October 18, 1962."

Paragraph 7 and 8 of plaintiffs' complaint also infer and inject into the case, the issue of hierarchical jurisdiction or affiliation of St. Michael's Church as pertaining to defendant John Sidorsky and certain action which had been taken against him and in regard to decisions of the "Church Tri-

bunals" which sought to discipline both Peter Uhniat and John Sidorsky.

Defendants' answer to plaintiffs' complaint denied the jurisdiction of Metropolitan Leonty and the clergy under him, to govern and to discipline the members of St. Michael's Church and to impose jurisdictional requirements upon the church. They further denied the validity of any decisions of "Church Tribunals" as lawfully effecting the rights of defendants Peter Uhniat and John Sidorsky. The answer further averred that the meeting of (3197a) January 27, 1963 was a valid and lawful annual meeting of the church parishoners and that the officers and members of the Parochial Council elected at that meeting were properly elected and had the right to exercise their respective offices.

Defendants also filed new matter and a counterclaim which requested the court to dissolve the injunctive relief granted in favor of the plaintiffs, sought the court to declare the meeting of January 27, 1963, as a valid meeting of the parishioners, and requested the court to enjoin the plaintiffs from interfering with the rights of membership in St. Michael's Church of defendants Peter Uhniat and John Sidorsky. The defendants also took direct issue with the alleged jurisdiction of the Metropolitan Council of New York over St. Michael's Church by citing a statute of said Council which requires the certification of a formal resolution of an individual parish, prior to the recognition of such individual parish as being under the jurisdiction of the "All American Sobor, the Metropolitan, the Bishop Sobor, the Metropolitan Council and the diocesan authority . . ." Paragraph 28 of the defendants' new matter and counterclaim states in this regard that "(T)he Parish of St. Michael's never adopted any such Resolution and never conceded any jurisdiction to the Metropolitan Council, but always considered itself a self-governing autonomous Parish."

Voluminous additional pleadings were filed in the case including various preliminary objections, answers, replies and counter-replies, and petitions and rules. The court was, of course, obliged to carefully weigh and consider each of these interim pleadings and requests, and to enter various orders in regard thereto, whenever judicial decrees appeared to be needed and whenever they were appropriate in the long course of this litigation.

The most significant of the pleadings at this stage of the case are the plaintiffs' complaint and the defendants' amended answer and counter-claim which avers that St. Michael's Church has always been under the formal jurisdiction of the Patriarchal Exarchate, whose See is the St. Nicholas Cathedral, New York City. As stated, supra, the plaintiffs' basic position is that St. Michael's Church is affiliated with and is under the jurisdiction of the American Metropolitan, whose See is also located in New York City.

(3198a) Following the initial series of hearings in this case which were conducted during 1963, the court filed an adjudication on January 17, 1964, in regard to the disputed annual meetings of the parishioners which were held on January 27, 1963 and February 3, 1963. The meeting favored by the defendants was the first meeting held and the meeting favored by the plaintiffs was the second of the two meetings. The court held that the meeting of January 27, 1963, had been properly and lawfully postoned by the Church Warden and by the Pastor and Rector of the church, due to the fact that a heavy snow fall had occurred in Philadelphia on January 26 and 27, 1963, and also because the public transportation system of the city was completely shut down by a strike of the Transportation Workers' Union against the Philadelphia Transportation Company. Accordingly, the court affirmed the plaintiffs' position in regard to the disputed annual meetings of 1963. Also, the court conducted the annual meeting of parishioners for 1964, through its appointed representative. The officers elected

at the annual meeting of January 26, 1964, have continued to serve in the offices to which they were elected, pending the final outcome of this litigation and the resumption of normal church affairs by this parish.

The hearings in this case which have been held throughout the period from 1964 to 1966, have, by-in-large, been concerned with the over-riding issue presented in this case —whether St. Michael's Church is properly affiliated with or under the jurisdiction of the American Metropolitan or whether it is properly affiliated with and under the jurisdiction of the Patriarchal Exarchate—the spiritual and administrative representative in this country of the Patriarch of Moscow. Of course, as indicated by the docket entries, pleadings and record itself, the parties and their attorneys deemed it necessary to present numerous other petitions to the court throughout the period from 1964 to 1966, upon many of which the court held hearings. This was necessary throughout the litigation due to the complete breach which existed and which continues to exist between the two opposing groups and because of the seriousness of the basic issue presented—in which of two existing and competing hierarchical systems and jurisdictions does St. Michael's Church properly belong and owe its allegiance?

In view of the fact that the plaintiffs have contended (3199a) that the church is an American Metropolitan Church and the defendants have contended that the church is a Patriarchal Church, it is clear that the resolution of this dispute properly lies in a court of equity, since neither of the two competing systems of church hierarchy would be competent to resolve the dispute. Also, it is of interest to note at the outset, that neither of the two systems of church hierarchy has formally sought to intervene in this litigation concerning St. Michael's Church.

In order to properly understand the problems and issues presented by the jurisdictional conflict evident in this case, the court has deemed it important and necessary to review

the history of the Russian Orthodox Church in this country as well as the history of the church in Russia from whose roots the American church was established and grew.

(3200a) HISTORICAL SURVEY OF THE RUSSIAN CHURCH*

A. The Church in Russia

Christianity in Russia had its birth in the ninth and tenth centuries. In 864 A. D., Saint Photius the Great, Patriarch of Constantinople, sent a bishop to Kiev the largest city in Russia, to convert the Russians to Christianity. When Prince Oleg of Russia came into power in 878, he opposed Christianity and tried to stop the conversion of the Russians. Despite this, Christianity slowly infiltrated into Russia and by 945 A. D., a church existed in Kiev.[1]

Olga, Princess of Russia, converted to Christianity in 955 A. D.[2] But her son and successor to her crown, Svyatoslav, refused to convert. However, Vladimir, Olga's grandson, who reigned from 980 to 1015 A. D., converted to Christianity in 988 A. D., and from that date until 1917, Christianity was the State Religion of Russia.[2]

In 1237 A. D., Russia was invaded by the Mongol Tartars. The city of Kiev was destroyed and never recovered from the invasion and the See of the church was thereafter trans-

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* This statement of history of the Russian Church is based in part upon documents and testimony contained in the record of this case, and is based in part upon other source materials which are noted in the footnotes relative to this section of the Court's adjudication. The Court deemed it important and necessary to advise itself of the church history in order to better understand and to better comprehend the issues arising from this litigation, and accordingly, certain outside source materials were read and reviewed by the Court in connection with the preparation of this adjudication.

[1] Ware, The Orthodox Church 87 (1963).

[2] Ibid.

ferred to Vladimir.[3] In 1325, the See was transferred to Moscow, which had grown to be, by that time, the largest and most important city in Russia.[4] While Russia was under the rule of Mongol suzerainty, the church increased in wealth, due to the fact that the Mongol leaders allowed the church some degree of administrative autonomy.[5]

The conquering of Constantinople by the Turks in 1453 brought about the fall of the Byzantine Empire and caused the lessening of the power of the Patriarch of Constantinople. Many Russians considered the invasion of the Turks to be an act of God. They felt that the Patriarch was being punished for his activities at the (3201a) Florentine Council of 1438 and 1439 in which he advocated and helped to create a plan to reunite the Christians of the East and the West. They also felt that Russia was destined to become the ecclesiastical power of the world.[6]

Isidore, a Greek, who had been appointed Metropolitan of the Russian Church by the Patriarch of Constantinople, attended the Florentine Council. Upon his return to Russia, he was imprisoned by the Grand Duke in 1441, because of his support of the reunion plans formulated in Florence. The Russians did not ask the Patriarch of Constantinople for a new Metropolitan because the official church at Constantinople accepted the decrees of Florence as binding until 1453.[7]

In 1448, a new Metropolitan was elected by a council of Russian bishops without guidance or authority from Constantinople.[8] In 1453, Constantinople abandoned its union

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[3] Id. at 91-95; Casey, Religion in Russia 6-7 (1946).

[4] Ibid.

[5] Ibid.

[6] Ware, 112-119; Casey 6-7.

[7] Ware, 112-113.

[8] Ibid.

with the Florentine Council. However, the Russians continued to elect their own Metropolitan and from 1453 until the present day, the Russian Church has been an autocephalous entity.[9]

During the reign of Theodore, Ivan's ("The Terrible") son, the Russian Metropolitan became an independent Patriarchate. Jeremiah, the Patriarch of Constantinople, had been ousted from Constantinople and was in exile in Russia. He was glad to find refuge among the friendly Russian people and supported Theodore's plan to create a Russian Patriarchate and in 1589, he presided at the coronation of Job, the first Patriarch of Russia.[10] Following the reign of Czar Theodore, the Czars and the Patriarchal heads of the church were in conflict as competing powers in Russian society.[11]

During the reign of Peter the Great (1682-1725), the Patriarchate was discontinued, and Peter successfully subordinated the church to the Russian State.[12] In 1721, Czar Peter issued the Spiritual Regulation which abolished the Patriarchate and substituted in its place a representative assembly called the "Holy Synod", which body governed the Russian Church until 1917. The structure and (3202a) constitution of the Holy Synod was not based upon Orthodox canon law, but followed more closely the structure and constitutions of the Protestant synods of Germany. The Czar, did not attend the meetings of the Holy Synod, but was referred to as the "Supreme Judge of the Spiritual College," indicating his power over the Holy Synod. One member of the Holy Synod, referred to as the "Chief Procurator", was a government official appointed by the Czar.

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[9] Ibid.

[10] Id. at 118-119; Casey, 9.

[11] Ware, 119-125; Casey, 9-10.

[12] Benz, The Eastern Orthodox Church 173-174 (Anchor Books edition, 1963).

The remaining members were ecclesiastics—bishops, priests and heads of religious orders. Under the "Spiritual Regulation," the church did not have the status of an autonomous church institution, but was more closely analogous to a department or branch of the Czarist government.[13]

During the mid-nineteenth century, the church increasingly became a symbol of the Czar, and of the imperialism and anti-intellectualism of the Czars. At the outbreak of the Russian Revolution, the church represented many of the disliked and hated characteristics of the Russian system in the eyes of the revolutionaries and liberals. Not only was it autocratic and repressive, but it served as the state's chief organ in maintaining the "status quo" and in maintaining a feudal type of social structure controlled by the aristocratic and noble classes.[14]

During the latter half of the nineteenth century, many programs and ideas for social reform were actively supported by the working classes of industrialized countries. The leaders of the working class in Russia were greatly influenced by the philosophical and social writings of Hegel, Marx and Engels. Lenin emerged as the leader of the Russian agitators for social reform, shortly after the turn of the century. He called for the institution of a plan for social reform by the means of direct political action based upon the support of the working masses.

Lenin advocated the overthrow of the "Czarist" government by popular appeal and through the use of force and violence, if necessary. In 1917, as a result of the Bolshevik Revolution, Lenin and his followers seized the political control of Moscow, and by 1922, the Bolsheviks had gained

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[13] Ware, 126-129; Casey, 11-19.

[14] Casey, 62-86; Curtiss, The Russian Church and the Soviet State 3-8 (1953).

complete control politically in Russia and had seized the power of the government in Russia.[15]

(3203a) On August 15, 1917, just prior to the seizure of control of the city of Moscow by the Bolsheviks and shortly after the establishment of the Provisional Government, an All-Russian Church Council was convoked at Moscow for the purpose of reorganizing the internal administration of the church. The convocation of the Council was authorized by the Provisional Government. The major reform established by this council was the restoration of the Patriarchate as the Supreme administrative head of the Russian Church.[16] On November 7, 1917, Tikhon, Metropolitan of Moscow, was elected to the office of Patriarch by the bishops attending the council.[17]

A few days after Tikhon's election, the Bolsheviks seized control of the city of Moscow. Upon the seizure of political power by the Bolsheviks, the church was faced with the realization that one of the major tenets of communism is the establishment of an atheistic state. There was a great deal of confusion regarding the future role of religion in Soviet Russia as well as intolerance on the part of Soviet officials toward the church and the clergy.[18] On February 5, 1918, the Soviet Government issued a decree eliminating the legal and property rights of the Russian Church.[19]

During 1921 and 1922, the Russian people suffered a critical drought and famine. Even though the revolutionary fighting had, by-in-large, ended in 1921, a more serious

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[15] Casey, ibid.

[16] Ware, 137-138; Curtiss, 35-43; Emhardt, Religion in Soviet Russia, 3-12 (1929).

[17] Ibid.

[18] Casey, 95-112; Anderson, People, Church and State in Modern Russia, 53-62 (1944).

[19] Emhardt, 19-21.

problem confronted the Bolshevik leaders, it being, the necessity of purchasing large quantities of foreign foodstuffs to meet the crisis of famine. Patriarch Tikhon sought to collect some of the wealth of the Russian Church for use as collateral for a foreign loan in order to purchase food for the starving populace. However, Tikhon's plan conflicted with the Soviet Government's policy that the sole activity and purpose of the church was that of conducting religious worship.[20]

(3204a) Thereafter, in 1922, the Government decreed that the church surrender to it all church valuables of non-religious significance. Many Russian parishes were violently opposed to the 1922 confiscation decree and refused to surrender any church property to the agents of the Soviet Government. As a result, fighting occurred between government agents who attempted to enforce the decree and those parishioners and clergymen who refused to comply with the decree. Thereafter, many of the outstanding leaders of the church were either imprisoned or executed.[21]

Patriarch Tikhon, in 1922, issued a proclamation calling upon the faithful to resist the government's confiscation decree. The Bolsheviks considered Tikhon's proclamation to be counter-revolutionary and Tikhon was arrested in the summer of 1922.[22]

At the time of his arrest, a small radical group of the clergy which had opposed Tikhon's election as Patriarch in 1917, persuaded Tikhon to pass the control of the Patriarchate to them. Patriarch Tikhon granted this group the power to open the Patriarchal Chancery conditioned upon

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[20] Anderson, 74-76; Casey, 97-99; Curtiss, 106-128; Kolarz, Religion in the Soviet Union 38 (1961).

[21] Ibid.

[22] Anderson, 76; Casey, 99-109; Curtiss, 117-118; Kolarz, 41; Emhardt, 14; Ware, 159.

their naming Metropolitan Agathangel to serve as the Patriarchal substitute during Tikhon's imprisonment.

The radicals made no effort to transfer the control of the Patriarchate to Agathangel. Instead, they set up a Provisional Supreme Administration as the governing body of the church. They then convoked a Sobor in 1922, at which they voted to abandon the Patriarchal form of church administration. In place of the Patriarchate, a Supreme Church Administration was to govern. They also eliminated the "monarchial" order of the Patriarchate.

The religious organization which was created by the efforts of this radical group of clergy was called the "Living" or "Renovated" Church. It received the sanction of the Soviet Government.[23]

(3205a) Very few of the church followers supported the "Living Church". But it succeeded in spreading its influence throughout Russia because of the support of the Soviet Government.[24]

At its second Sobor in May of 1923, the representatives of the "Living Church" voted to depose and defrock Patriarch Tikhon. However, in June, 1923, Tikhon was released from prison and refused to recognize the "Living Church" as the validly created church in Russia.[25]

Patriarch Tikhon died in May of 1925, without having been able to effect any reorganization of the church in accordance with his position as Patriarch. Thereafter, Metropolitan Peter Krutitsky succeeded to the power of Tikhon as "Locum Tenens" (deputy) Patriarch. Shortly thereafter, he was imprisoned and Metropolitan Sergius became suffragan or the vice-"Locum Tenens" Patriarch.[26] Because of

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[23] Anderson, 76-87; Casey, 107-109; Curtiss, 129-174; Emhardt, 59-123; Ware, 159-160.

[24] Ibid.

[25] Ibid.

[26] Casey 109-110; Curtiss, 181; Emhardt, 140-146; Ware, 161.

his refusal to negotiate with the "Living Church", Sergius was imprisoned in 1926 and 1927.

In the latter part of 1927, the Soviet Government's attitude towards the Patriarchal Church changed. On July 29, 1927, Metropolitan Sergius was released from prison and shortly thereafter, the Soviet Government gave legal recognition to the Patriarchal Church and recognized Sergius as being the spiritual leader of the Patriarchal Church. This change in attitude on the part of the Soviets was caused by a corresponding change in attitude on the part of Sergius in regard to the Soviet Government. Instead of opposing interference on the part of the Soviet Government in church affairs, as he had advocated prior to his imprisonment, Sergius negotiated a compromise with the Soviet authorities. For example, in May, 1927, he issued a decree in which he condemned the counter-revolutionary activities of Russian Orthodox clergymen and parishioners and on July 29, 1927, the day on which he was released from prison, he publicly declared that the church, if controlled by him, would be loyal to the Soviet State.[27]

(3206a) Those who opposed Sergius' apparent agreement of compromise with the Soviet State were forced to practice their religious beliefs in secrecy in order to avoid possible religious persecution by the Soviet Government and in order to satisfy their personal religious principles.[28]

From 1922 to 1927, the "Living Church" was favored by the Soviet Government. The Patriarchate functioned as best it could without goverment recognition. However, in 1927, the Soviet Government legally recognized the Patriarchate, which recognition signaled the decline of the "Living Church". The Patriarchate thereafter became the foremost church in Russia.

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[27] Anderson, 94-96; Curtiss, 182-186; Emhardt, 140-161; Ware, 161-165.

[28] Ibid.

From 1927 to 1932, great changes took place in the political and economic structure of the Soviet Union. By 1927, the "New Economic Policy" was discarded and the era of economic planning began. This change followed the exile of Trotsky and assention to power of Stalin. The Stalinites attempted to change Russia from an agrarian society to an industrial society and they also commenced a serious attack upon religion and the church in Russia, particularly in the large rural land areas, where they attempted to collectivise the farm lands.[29]

After 1932, the Government did not play an active role in administering the internal affairs of the church. Instead of openly persecuting religious believers, the Government to a greater extent, used the techniques of mass propaganda to attack religious institutions and religious beliefs.[30]

At the outset of the Second World War the Russian Church pledged its total assistance to the War effort and because of this, the Soviet Government has shown some degree of tolerance of religious worship.

When the German armies invaded Russia, the inhabitants of many areas of Western Russia considered the Germans to be religious liberators because German commanders did not interfere (3207a) with the revival of religious services. Consequently, the Soviet Government was forced to give some consideration to the affairs of the Russian Church. In 1943, Stalin restored the Office of Patriarch. Sergius who had been vice-locum tenens from 1925 to 1936 and then locum tenens from 1936 to 1943, was elected Patriarch. Sergius died the following year and in February, 1945, Alexis, Metropolitan of Leningrad, was elected Patriarch and has continued in that high office to the present time.[31]

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[29] Anderson, 99-113; Curtiss, 228-247.

[30] Anderson, 114-161.

[31] Anderson, 190-214; Casey, 113-132; Ware, 166-167.

Since 1943, the relationship between the church and the state in the Soviet Union has been fairly stable. Religious worship generally has been tolerated and the Government has not actively attempted to close the churches. However, the Government, throughout this period, has never given up its goal of establishing an atheistic society in Russia and has persisted in advertising its anti-religious views through mass propoganda.[32]

(3208a) B. The Church in America

The beginnings of Orthodoxy in the "new world" began in 1794 when ten Russian monks were sent to Alaska as missionaries to the Indians and Eskimos. Until the middle of the nineteenth century almost all of the missionary work was centered in Alaska and the Aleutian Islands.[33]

From 1858 until 1870, Sitka, Alaska was designated as the See for the suffragan ruling Russian Orthodox bishop in the "new world". After the Alaska purchase of 1867 by the United States, the Holy Synod of Russia elevated the American mission to a diocese which was called to Diocese of Alaska and the Aleutian Islands. This diocese was created in 1870. In 1872, Bishop John, the first ruling bishop of the diocese moved the See of the Russian Church in the "new world" from Sitka, Alaska to San Francisco, California.

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[32] Kolarz, 36-94; Ware, 167-175.

[33] "Exarchate of North and South America (Brief Canonical History)", a report or memorandum issued by the Moscow Patriarchate, January 12, 1956.

Also see Kedroff v. St. Nicholas Cathedral of the Russian Church in America, 344 U. S. 94, 101 (1952); Grigorieff, The Historical Background of Orthodoxy in America, 5 St. Vladimir's Seminar Quarterly 3-12 (1961); Schrank, Problems of Orthodoxy in America; The Russian Church, 6 St. Vladimir's Seminar Quarterly 185-187 (1962).

Russian Orthodoxy in the United States, had its greatest growth in the early 1900's. This growth was caused by the great influx of Greek, Slavic, Syrian and Russian immigrants who joined the Russian Church and by the conversion of many Uniates from Roman Catholicism to Russian Orthodoxy. Until 1917, all Orthodoxy in America was basically under the jurisdiction of the ruling Russian bishop in America due to the fact that the Russian Church was the only Orthodox Church which had a well-established diocese in this country.

In 1898, Bishop Tikhon, who became Patriarch in 1917 was appointed Bishop of the Diocese of Alaska and the Aleutian Islands and he ruled until 1907. In 1900, the name of the diocese was changed to Diocese of the Aleutian Islands and North America and Tikhon was elevated to Archbishop of the Aleutian Islands and North America.

(3209a) Tikhon was instrumental in having the See of the diocese transferred from San Francisco to New York City in 1905, where a new cathedral, St. Nicholas Cathedral, was constructed.

The Most Reverend Platon (Rozhdestvensky) succeeded Tikhon as Archbishop of the Aleutian Islands and North America and ruled the diocese until 1914. The Most Reverend Evdokim succeeded Platon and ruled until 1917.[31]

When the Provisional Government obtained control of Russia for a short period of time in 1917, all of the Orthodox Churches in the United States were affiliated with the North American Diocese of the Russian Orthodox Greek Catholic Church. The splitting up of the diocese into various sects and national religious groups did not take place until after the Bolshevik's obtained political control of Russia in the latter part of 1917.

A 1964-1965 pamphlet issued by the Protestant Episcopal Church lists nineteen separate Orthodox National Churches

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[31] Ibid.

in North America and in South America.[35]

(3210a) There are three ecclesiastical organizations which claim to be the true canonical Russian Orthodox Greek Catholic Church in America. They are: (1) The Russian Orthodox Greek Catholic Church, Archdiocese of the Aleutian Islands and North America (also known as the Patriarchal Exarchate of the Russian Orthodox Church in the Americas); (2) the Russian Orthodox Church Outside of Russia (also known as the Karlovitz Synod or the Synod of Bishops Abroad); (3) the Russian Orthodox Greek Catholic Church of America (also known as the Metropolia). Except for the first organization, the latter two groups

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[35] The Joint Commission in cooperation with the Eastern and Old Catholic Churches of the General Convention of the Protestant Episcopal Church, Parishes and Clergy of the Orthodox and other Eastern Churches in North and South America (1964-1965). The nineteen Orthodox Churches listed in the publication are as follows:

1. Albanian Orthodox Diocese of America.
2. Albanian Orthodox Archdiocese of America.
3. Bulgarian Eastern Orthodox Church.
4. American Carpatho-Russian Orthodox Greek Catholic Diocese.
5. Estonian Orthodox Church.
6. Greek Orthodox Archdiocese of North and South America.
7. The Romanian Orthodox Episcopate of America.
8. Russian Orthodox Greek Catholic Church of America.
9. Russian Orthodox Church Outside of Russia.
10. Western Hemisphere Romanian Orthodox Missionary Episcopate of Canada (Under the Jurisdiction of the Russian Orthodox Church Outside of Russia).
11. Patriarchal Exarchate of the Russian Orthodox Church in the Americas.
12. Serbian Orthodox Church in the United States of America and Canada.
13. Syrian Antiochian Orthodox Archdiocese of New York and North America.
14. Antiochian Orthodox Archdiocese of Toledo, Ohio and Dependencies.
15. Ukranian Orthodox Church of America (Ecumenical Patriarchate).
16. Ukranian Orthodox Church of the United States of America.
17. Ukranian Greek-Orthodox Church of Canada.
18. Holy Ukranian Autocephalic Orthodox Church in Exile.
19. Ukranian Autocephalous Jurisdiction.

claim to be autonomous Russian Orthodox Churches which are not subject to the administrative jurisdiction of the Patriarchate of Moscow. The history of these three groups will be discussed, infra.

Various movements to establish a Russian Church Outside of Russia were begun in 1919. In that year, Northern Russia and Moscow was controlled by Bolsheviks while Southern Russia was under the control of the counter-revolutionary "White Russians". A Temporary High Church Adminstration was organized in Southern Russia because of the lack of communication between the Patriarchate and the bishops of the church in Southern Russia. By 1921, the White Russian Armies had been defeated by the Bolshevik forces and the Bolsheviks obtained control of all of Russia. Many of the bishops and clergy who had formerly served the church in Southern Russia fled the country. In 1921, the Patriarch of Serbia invited these bishops to hold a Council in Karlovitzy, Yugoslavia. This council established a Synod of Bishops Outside Russia, which claimed to be the Supreme hierarchical authority of all the Russian Churches outside of Russia. This group was politically oriented and it supported the movement to overthrow the Bolshevik government in Russia and to reinstate the rule of the Czars.[36]

Due to the chaotic conditions existing in Russia, Patriarch Tikhon issued a decree on November 20, 1920 granting diocesan Russian Bishops the power to temporarily and independently govern (3211a) their parishes and to assume full hierarchical power if it became impossible for them to maintain communications with the Patriarchate in Moscow, or in the event that the Patriarchate in Moscow discontinued its administrative activities.[37] The Russian Church

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[36] Grigorieff, 26-28; Schrank, 190-191.

[37] Exhibit DC-51 ("Ukase No. 362").

Outside of Russia based the legality of its founding upon this decree of the Patriarch of Moscow of 1920.

When the Synod of Bishops Outside of Russia was created in 1921, almost all of the Russian Orthodox religious groups outside of Russia accepted its edicts. However, Patriarch Tikhon, on August 5, 1922, by decree, abolished the Administrative Board of the Karlovitz group and directed the ruling bishop of Paris, Metropolitan Evlogy, to organize a new program of church administration for the Karlovitz group. At the annual Synod held in 1922, Evlogy helped to plan a new administrative program which Patriarch Tikhon privately approved.[38]

However, Tikhon's successors, Patriarch Sergius and Patriarch Alexis, have refused to recognize the Russian Church Outside of Russia and have considered it to be uncanonical and without legal basis.[39]

Archbishop Evdokim was the last ruling bishop of the North American Diocese to reign in peace. He ruled the diocese in this country from 1914 to 1917. At that time, the diocese was under the hierarchical authority of the Holy Synod and received financial support from the Russian Government. In 1917, Evdokim left America to attend the Sobor held in Moscow which restored the Patriarchate. Immediately after the Sobor, the Bolsheviks seized control of the church. All normal communications with the North American Diocese ended. Evdokim never returned to America and the American Diocese was left without a ruling bishop. Bishop Alexander (Nemolovsky) of Canada, Evdokim's suffragan, temporarily controlled the diocese. A Sobor was held in Cleveland, Ohio, on February 25, 1919 and the delegates pursuant to the new laws of (3212a) election of diocesan bishops promulgated at the Moscow Sobor of 1917-1918, elected Alexander as Primate of North America.

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[38] Grigorieff, supra note 36; Schrank, supra note 36; Ware, 182-183.

[39] Ibid.

Thereafter, Patriarch Tikhon elevated Alexander to Archbishop. However, Archbishop Alexander was unable to establish peace among the various Russian Orthodox parishes and soon returned to Russia.

After Alexander's resignation, the diocese was again left without a ruling bishop. Metropolitan Platon (Rozhdestvensky), the ruling bishop of the North American Diocese from 1907 to 1914, returned to the United States in 1921. Prominent Russian Orthodox churchmen and bishops petitioned the Patriarch to reappoint Platon as head of the diocese. However, no answer to this petition was received from the Patriarch and at a Sobor which was held in Pittsburgh, Pennsylvania in November, 1921, Metropolitan Platon was asked to rule the diocese. Platon refused to accept this position without authority from the Patriarch. Finally, in 1923, Patriarch Tikhon orally appointed Platon as head of the American Diocese through a representative of the Young Men's Christian Association who was visiting in Moscow. After being released from prison, Patriarch Tikhon confirmed his appointment by a decree dated September 29, 1923.[40]

In a document issued in February, 1924, Patriarch Tikhon purportedly dismissed Platon for participating in counter-revolutionary activities against the Soviet Government and announced that a new ruling bishop would be chosen by him.[41] However, a new ruling bishop was not appointed until 1933.[42] Platon was allowed to rule the American Diocese until 1933.

Prior to the above decree, the representative of the "Living Church" sent John Kedrovsky to America in 1923 as Archbishop of the Aleutian Islands and North America.

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[40] Grigorieff, 13-21; Schrank, 187-188.

[41] Ibid.

[42] See page 21, infra

When Patriarch Tikhon was released from prison in 1923, he refused to recognize (3213a) Kedrovsky as his representative.[43]

In March, 1924, a few weeks after Platon was removed from office, Kedrovsky filed a law suit in the New York Courts to gain control of St. Nicholas Cathedral in New York City. He claimed that he, and not Platon, was the lawfully appointed Archbishop of the North American Diocese and was, therefore, entitled to the use and occupancy of the Cathedral.

In April, 1924, just after Kedrovsky started the court action, the North American Diocese held its Fourth All-American church Sobor in Detroit. The delegates were concerned about the court action commenced by Kedrovsky and tried to organize a program to counter Kedrovsky's claims. They were also concerned about the January, 1922 decree issued by the Patriarch in which the Patriarch stated that he was going to replace Platon with another bishop. Furthermore, the delegates believed that it would be disastrous for the church to allow Platon to return to Russia and to wait for Patriarch Tikhon to send a new ruling bishop to this country. They also believed that any new appointee of the Patriarch would be a representative of the "Living Church", and a mere tool of the Soviet Government. They feared that in such an event, Kedrovsky would obtain complete control over the American Diocese. The delegates, therefore, decided to declare that the American Diocese was to temporarily be a self-governing body and was to function as such an organization until a Russian Sobor was legally convoked to decide the question of the relationship between the American churches and the Mother church in Moscow. Until this Sobor was called, the American Diocese was to be governed by an Archbishop which it elected. The Arch-

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[43] See pages 10-11, supra.

bishop, it was decided, would govern with the aid of a Council of Bishops, and a council composed of both clergy and lay members. On April 4, 1924, Metropolitan Platon was elected Archbishop of the American Diocese. Until 1933, the church authorities in Moscow did not take any action to oust Platon or to discipline the Metropolia.[44]

(3214a) The individuals who met in Detroit in 1924 felt that they were literally conforming with the decrees of the Moscow Sobor of 1917 and 1918 and with the decree of Patriarch Tikhon of November 20, 1920.[45] The decree of the Moscow Sobor of 1917 and 1918, allowed a diocese to elect its own ruling bishop. The Patriarch's Decree of November 20, 1920 granted the Diocesan Bishops the power to autonomously rule their parishes and clergy in the event that it was impossible to maintain communications with the Highest Church authorities in Moscow.

On December 24, 1924, the *Kedrovsky* case was decided in favor of Metropolitan Platon by the New York Supreme Court.[46] However, the New York Court of Appeals reversed this decision and Kedrovsky regained his control of St. Nicholas Cathedral.[47] In spite of his judicial victory, very few American parishes recognized Kedrovsky as their ruling bishop.

Before Platon returned to America in 1922, he participated in the Sobor which organized the Karlovitz Synod. But after he returned to America, he acted independently and refused to fully comply with the doctrines and future plans of the Karlovitz group. In 1926, Platon asked the Karlovitz Synod to recognize him as the lawful ruling arch-

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[44] Kedroff v. St. Nicholas Cathedral, op. cit. supra note 34, 103; Emhardt, 228-240; Grigorieff, 21-23; Schrank, 188-189.

[45] See pages 14-15, supra.

[46] Kedrovsky v. Rojdevensky, 72 N. Y. L. J. 1211 (1924).

[47] Kedrovsky v. Rojdevensky, 242 N. Y. 547 (1926).

bishop in North America. The Synod informed Platon that it would recognize him as such if he signed a statement indicating that he recognized that the Karlovitz Synod was the supreme authority of the Russian Orthodox Church Outside of Russia. Platon was also asked to renounce the proclamation of autonomy of the Russian Orthodox Church in America which he helped to adopt at the Detroit Convention of 1924. Platon refused to accept these conditions and he then disassociated himself completely with the Karlovitz Synod.

In 1927, the Karlovitz Synod purportedly suspended Platon and thereafter appointed Bishop Apolinarius, an American Bishop who did not support Metropolitan Platon, to the position of Archbishop of North America. Until the appointment of Apolinarius, the Karlovitz group had not functioned as an independent diocese in America, but had cooperated with Metropolia Platon.[48]

(3215a) Only a few parishes in America joined the Karlovitz Synod under the jurisdiction of Apolinarius. However, the number of parishes in this group increased after the Second World War. This was caused by the large number of displaced persons who came to this country after the Second World War and who joined the Russian Synod of Bishops Outside of Russia (the Karlovitz Synod).[49]

Unlike the Karlovitz bishops, Bishop Platon, at least up to 1933, tried to maintain satisfactory relations with the Patriarchate in Moscow and at all times recognized the Patriarch as being the supreme ruling head of the Russian Orthodox Greek Catholic Church. However, due to his belief that the Patriarchate could not act freely, he concluded that it was best to maintain the autonomous status of the church in America.

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[48] Grigorieff, 27; Schrank, 190-191.

[49] Ibid.

In March, 1928, Platon appealed to Sergius to support the Metropolia in its fight with Kedrovsky in regard to the possession of St. Nicholas Cathedral. Sergius acknowledged Platon's appeal and asked him to sign a pledge stating that he would not participate in political activities, especially political activities antagonistic to the Soviet Government. In order to prevent a complete break with the Mother Church, Platon delayed signing the pledge and the church authorities in Russia did not pressure him to sign such a document until 1933. However, Platon later proclaimed the American Diocese to be autonomous and accused the Mother Church in Russia of becoming a tool of the Soviet regime.[50]

In 1933, Archbishop Benjamin Fedchenkoff was sent to the United States as the representative of the Patriarchate of Moscow. On March 22, 1933, Benjamin was appointed to the position of Patriarchal Exarchate in America and was asked to examine the affairs of the North American Diocese. He was also authorized to dismiss Metropolitan Platon and to take over Platon's position.

Benjamin requested Platon to sign a pledge similar to the one Platon had refused to sign in 1928. Platon, along with the majority of the American clergy, refused to sign this pledge and on August 16, 1933, the Patriarchal Church in Moscow issued a decree which revoked Metropolitan Platon's declaration of autonomy (3216a) and stated that the group which Platon had organized was schismatic and was not a legally organized diocese. Platon was decreed to be on probation. He was prohibited from ruling the diocese until he repented and until an ecclesiastical court rendered a decision in his favor. A decree issued by the Patriarchate on June 29, 1934, appointed Benjamin as the permanent ruling bishop of the North American Diocese and summoned Platon to Moscow. Benjamin was given the title

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[50] Grigorieff, 29; Schrank, 191.

of Archbishop of the Aleutian Islands and North America.[51]

The decree issued by the Patriarchal Church in Moscow illustrates that from 1924 until 1934, the only formal Patriarchal religious organization in the United States was the Metropolia—the group headed by Metropolitan Platon, due to the fact that the 1934 decree recognizes the formation of a new Patriarchal diocese in America:

> "His Eminence, the Exarch in America, reports that he has organized in New York a Diocesan Council and that our North American Diocese has begun official existence".[52]

The above language illustrates that prior to 1934, there was no church in America which was representative of the Patriarchate except for the group which was headed by Bishop Platon.

Platon, it is claimed, was suspended in 1924 by the Patriarch and because of this, it is also claimed that Platon headed a schismatic group after 1924. It is further claimed that due to these circumstances there was no ruling Patriarchal bishop in the United States until Benjamin was sent here in 1933. However, the court's review of the record in this case established that Platon was never formally dismissed in 1924 and was the ruling bishop of the Patriarchate until he was formally dismissed in 1933.

(3217a) On January 16, 1924, Patriarch Tikhon issued the following decree which purportedly dismissed Platon:

> "As we have data proving that the Metropolitan of North America (Platon) has engaged in public acts of Counter-Revolution directed against the Soviet power and of disastrous consequences to the Orthodox

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[51] "Exarchate of North and South America," op. cit. supra note 34; Grigorieff, 30-32; Schrank, 191-192.

[52] Quoted in Brief for Appellee, p. 37, **Kedroff v. St. Nicholas Cathedral**, 344 U. S. 94 (1952).

Church, Metropolitan Platon will be dismissed from the government of the North American Diocese from the day on which this Present Decision is announced to him. (2) The choice of a candidate for the North American Episcopal See will be the object of a special discussion. It will be his duty personally to announce this decision to Metropolitan Platon and to take over from him all the church property, governing the North American Diocese according to the special instruction which will be given to him. (3) Metropolitan Platon will be invited to come to Moscow to put himself at the disposal of the Patriarch." [53]

Pursuant to clause (2), Platon's dismissal was to become effective when his successor announced it to him. For nine years, a successor was not sent. Therefore, Platon was never formally dismissed from office until Exarch Benjamin's arrival to the United States in 1933 and his subsequent confrontation with Platon.

It is important to note that the above decree was issued only in regard to Platon and informed Platon that he would be dismissed from office at some future date. The decree did not purport to excommunicate Platon nor did it purport to discipline any of the clergy, laity, or bishops who supported Platon.

Despite the fact that a new Patriarchal diocese was created by Benjamin, very few parishes in America joined Benjamin's group and the vast majority of parishes remained faithful to Metropolitan Platon.

(3218a) Metropolitan Platon died on April 20, 1934.

At the Fifth All-American Church Sobor of the Russian Orthodox Church in North America (the Metropolia) held in Cleveland, Ohio in November, 1934, Bishop Theophilus (Pashkovsky) was elected Metropolitan. Bishop Theophilus

[53] Id. at 16.

was suspended by the Moscow Patriarchate on January 5, 1935.[54]

In 1935, Barnabas, the Patriarch of Serbia, invited the heads and representatives of the major Russian church organizations outside of Russia to attend a meeting in Karlovitz. Metropolitan Theophilus attended the meeting at which he, as the representative of the American Metropolitanate, entered into an agreement with the American Diocese of the Russian Church Outside of Russia (the Karlovitz Synod). The new group was to be headed by Metropolitan Theophilus. The agreement also allowed the Metropolia to maintain its autonomy. The agreement was confirmed by a Sobor of the Metropolia in 1937.[55]

Relations between the Russian Church Outside of Russia and the Metropolia were shaken by events which occurred during World War II. The Russian Church Outside of Russia refused to accept the election of Sergius as Patriarch in 1943, and considered the election as unlawful and uncanonical. Metropolitan Theophilus, on the other hand, considered the election to be beneficial to the Russian people throughout the world. The election brought great joy to the vast majority of the Russians in America and most of them were desirous of recognizing the Patriarch. In October, 1943, the bishops of the Metropolia voted to elevate the name of the new Patriarch during religious services. But, because they did not know whether Sergius was free to act, they decided not to submit to the administrative and judicial jurisdiction of the Patriarchate.

From 1943 to 1945, the Metropolia attempted to establish relations with the Patriarchate in Moscow and to re-establish canonical relations with the Mother church. However, negotiations of this type conflicted with the anti-Patriarchal

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[54] Grigorieff, 32; Schrank, 192.

[55] Ibid.

views of the Russian Church Outside of Russia. Consequently at an (3219a) All-American Sobor held in Cleveland, Ohio, in November, 1945, the Metropolia voted to withdraw from the Russian Church Outside of Russia and decided to formally recognize the spiritual, but not administrative and judicial authority of the Patriarchate.[56]

In 1947, Patriarch Alexis sent Metropolitan Gregory to the United States to negotiate with the American Metropolia in order to resolve the jurisdictional questions. The negotiations proved to be unsuccessful because neither the American Metropolia, nor Metropolitan Gregory would compromise their positions. The American Metropolia insisted on complete autonomy of the American church and the recognition of only the spiritual leadership of the Patriarch of Moscow. The Patriarchate, on the other hand, was willing to grant the American Metropolia ecclesiastical autonomy, but insisted that the Patriarchate was to have the right to approve of the ruling bishops elected at American Sobors and the right to maintain appellate jurisdiction over the American bishops in its own system of ecclesiastical courts. The officials of the American Metropolia would not submit to such a plan and the negotiations terminated.

The bishops of the American Metropolia, at a meeting held in November, 1947, decided to postpone the establishment of canonical ties with the Patriarchate, but reaffirmed their earlier decision to recognize the Patriarchate spiritually. In December, 1947, Patriarch Alexis, decreed that Metropolitan Theophilus and the bishops in his American jurisdiction were subject to trial by the ecclesiastical courts in Russia, that the Patriarchal interdict of 1935 which suspended Metropolitan Theophilus was also in force and that

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[56] Grigorieff, 35-40; Schrank, 192-195.

it extended to the other American bishops in the jurisdiction of the Metropolia.[57]

Notwithstanding this decree and the interdict of 1935, the Metropolia has continued to function as an autonomous body. Nor has the Metropolia again joined forces with the (3220a) Russian Church Outside of Russia which transferred its See from Munich, Germany to New York City in 1950.[58]

Many displaced persons who came to America after World War II joined the Russian Church Outside of Russia. At the present time, there are over 100 American parishes under the jurisdiction of this church. This group also considers itself to be the only lawful and canonical Russian Orthodox Church in this country and refuses to accept or even recognize any of the actions taken by the Mother church since the Bolsheviks obtained control of Russia in 1917.[59]

The Metropolia, unlike the Russian Church Outside of Russia recognizes the Patriarch as the lawfully elected primate of the Church of Russia and also recognizes that the Mother church in Russia is canonical. However, the Metropolia has refused to allow the Mother church in Russia to exercise administrative or judicial control over its American parishes, in spite of the fact that it considers itself united with the Mother church spiritually.[60]

From 1933 until 1947, Patriarchical Exarch Benjamin ruled the Archdiocese of the Aleutian Islands and North America.

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[57] Ibid.; "Exarchate of North and South America", op. cit. supra note 34; **Kedroff v. St. Nicholas Cathedral**, op. cit. supra note 34, 104-105.

[58] Schrank, 195.

[59] Id., 196-197.

[60] Id., 197-199.

The war between Germany and the Soviet Union which commenced in 1941 greatly affected the parishioners of the Russian Orthodox faith in the United States. Benjamin, who had had very little power over the Russians in America before the war started, became a prominent figure during the war. He campaigned for the Russian people and for the defeat of the Germans. He actively advocated Soviet-American friendship and when that war-time friendship became a reality, Benjamin was active in the Russian War Relief Society, the American Soviet Friendship Society, the Carpatho-Russian Congress for the Liberation of Russia Rubra, and other similar organizations.

(3221a) When Sergius was allowed to fill the empty Patriarchal seat in 1943, Benjamin's position in the United States was strengthened. The election of Sergius was seen as a great turning point in the Soviet Union's policies. The Russians in America accepted the election with great joy and considered Stalin to be a liberator of religious freedom. Several parishes which had previously been loyal to the Metropolia felt that there was no longer any reason for the Metropolia to maintain a temporarily autonomous status and advocated a return to the Patriarchal authority.

In 1943, the Archdiocese of the Aleutian Islands and North America was also incorporated under the Laws of the State of New York.

After the election of Patriarch Sergius, Metropolitan Benjamin travelled throughout the United States, visiting Russian Orthodox parishes outside of his jurisdiction, and demanded that these parishes submit to the Moscow Patriarchate. The American press publicized his visits and showed pictures of him meeting with important American political figures. His visits to the parishes were somewhat successful in that several of the parishes joined his jurisdiction.[61]

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[61] Grigorieff, 35-40.

Prior to 1941, very few parishes joined Archbishop Benjamin's jurisdiction. In fact, Benjamin did not even occupy St. Nicholas Cathedral in New York City, but used a small furnished apartment in Brooklyn as his headquarters. John Kedrovsky occupied the Cathedral until his death in 1934, even though he had little or no following in this country.

Nicholas Kedroff, his son, succeeded to his father's office and occupied the cathedral. When he died in 1944, he left his younger brother, John Kedroff in possession of the Cathedral.

In 1945, an action in ejectment was brought against John Kedroff by the American Metropolia, in the name of St. Nicholas Cathedral of the Russian Orthodox Church in North America. (3222a) Kedroff was named as the sole defendant in this action, however, after the action was commenced he associated himself with the Patriarchate, and admitted their representatives into the Cathedral. Metropolitan Benjamin occupied the Cathedral for the first time in 1945 when he was admitted to the Cathedral by John Kedroff.

In the ejectment proceeding, the Metropolia, claimed that it was entitled to the use and possession of St. Nicholas Cathedral on the basis of a statute passed in 1945 by the New York State Legislature which required all the Russian Orthodox Churches which had been formerly subject to the administrative jurisdiction of the Holy Synod or the Patriarchate in Moscow to be governed by the American Metropolia.[62] On the basis of this statute, the New York Court of Appeals, held that Bishop Benjamin, the prelate who was appointed by the Moscow Patriarchate, was not entitled to the use and occupancy of the Cathedral because he was not a representative of the Metropolia and that the possession of the Cathedral should be reinvested in the religious cor-

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[62] 50 McKinney's N. Y. Laws §105 (Article 5-C of the Religious Corporations Law of New York).

poration which was created in 1925 to acquire a Russian Orthodox Cathedral.

On appeal, the United States Supreme Court[63] reversed the decision of the New York Court of Appeals on the ground that the New York Statute upon which the decision was based was unconstitutional in that it violated the constitutional guaranty of freedom of religion by attempting to regulate church administration and by requiring conformity to church statutes adopted by the Metropolia. Whether or not Benjamin was the valid appointee of the Patriarchate, the United States Supreme Court held, was exclusively an ecclesiastical matter and could not be interfered with by the New York Legislation.

On remand the New York Court of Appeals ordered a new trial on the question of whether or not Benjamin and his successors were entitled to the use and occupancy of the Cathedral. After the trial, the Court of Appeals directed that a judgment be entered against the petitioners—those individuals (32235) claiming under authority of the Patriarchate—because it found that the Patriarchate was under the control of the U. S. S. R. Under the common law of New York, the court held, an appointee of the Patriarch was, in effect, an appointee of the U. S. S. R., and could therefore not validly occupy the Cathedral.[64] On appeal, the United States Supreme Court, in a per curiam opinion, reversed on the grounds that the decision based on common law principles rested "on the same premises which were found to have underlain the enactment of the statute struck down in Kedroff".[65] On the basis of this opinion, the Patriarchate was allowed to retain the use and possession of the Cathedral and has remained in possession thereof to the present time.

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[63] **Kedroff v. St. Nicholas Cathedral,** op. cit. supra note 34.

[64] 7 N. Y. 2d 191.

[65] **Kreshik v. St. Nicholas Cathedral,** 363 U. S. 190, 191 (1960).

(3224a) C. Bishop Adam and the Carpatho-Russians and Galicians.

Immediately before and during the Russian Revolution an independent Russian Orthodox Diocese, known as the Carpatho Russian Diocese, was organized in America.[66]

The parishioners of this diocese were immigrants who had come to this country from the area of Carpatho-Russia and Galicia (sometimes referred to as Russia Rubra). Prior to World War I, Russia Rubra had been a part of the Austro-Hungarian Empire. Following World War I, Russia Rubra was divided and became, in part, the territory of Poland and, in part, the territory of Czechoslovakia. The Carpatho-Russians and Galicians considered themselves to be Russians regardless of the foreign control of their homelands. During World War I, a nationalistic movement was started in the United States by the Carpatho-Russians and Galicians with the hope of freeing Russia Rubra from the rule Austro-Hungarian Empire and to reunite their Russia Rubra with Russia.[67]

The Carpatho-Russians and Galicians in Austro-Hungary were not under the ecclesiastical jurisdiction of the Russian Church, but were Uniates, that is, they were Greek Catholics under the jurisdiction of the Pope in Rome. Upon arriving in America, many of the Carpatho-Russians and Galicians joined Russian Orthodox parishes.

In 1916 the Holy Synod of Russia and Emperor Nicholas II issued a decree which permitted the Carpatho-Russians to organize a separate Carpatho-Russian Diocese and appointed a special Carpatho-Russian Suffragan Bishop, Bishop Stephan to the American Diocese.

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[66] Grigorieff, 33-35; St. Michael's R. O. Cathedral Silver Jubilee Banquet Program, October 10, 1937.

[67] Grigorieff, Id.

Archbishop Evdokim who was then the ruling bishop of the Russian Orthodox Greek Catholic Church, Archdiocese of the Aleutian Islands and North America, was sympathetic toward the (3225a) Carpatho-Russians and he supported the founding of a separate Carpatho-Russian Diocese. After Archbishop Evdokim left the United States in 1917, the Carpatho-Russians did not receive any similar support of the Russian Orthodox religious leaders in America and Bishop Stephan was obliged to act independently of the other Russian Orthodox religious leaders during the period following the Russian Revolution.[68]

In 1922, Bishop Stephan and Bishop Horazd of Moravia-Silesia consecrated Archimandrite Adam Philipovsky as a Bishop. Adam, as Archimandrite and Bishop, proved to be an important force in the organization of the Carpatho-Russian Diocese, and when Bishop Stephan left the Russian Church in the early 1920's to join the Roman Catholic Church, Bishop Adam succeeded him as ruling bishop of the Carpatho-Russian Diocese. The Carpatho-Russian Diocese was incorporated in 1931.[69]

Bishop Adam, until 1935, ruled his diocese autonomously and did not submit to any hierarchical authority, although there is some evidence that he had dealings with the Karlovitz Synod. A magazine article appearing in "The New Russian Word" included this account of Bishop Adam's activity:

> "It cannot be doubted that the termination of the schism in the bosom of the American Church will soon bring peace with Karlovci, as Bishop Adam for a time, and even in the very recent past, recognized the Synod in Karlovci. Archbishop Adam recently stated publicly, at the Sobor in Cleveland and at the Diocesan

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[68] Ibid.

[69] Ibid

Meeting in Wilkes-Barre, that the Karlovcy Jurisdiction in America was comprised mainly of his parishes."[70]

The above article was written to describe the merger which took place between the Carpatho-Russian Diocese and the Metropolia on March 25, 1935. One of the conditions of the merger was that the Carpatho-Russian Diocese was to be given certain autonomous rights and was to be headed by an Archbishop and a Diocesan Council.

(3226a) The article states that the union ended a schism which had lasted for twelve years. A few months after the merger of the Metropolia and the Carpatho-Russian Diocese, an accord was reached between the Metropolia and the Karlovitz Synod (also known as the Russian Church Outside of Russia).[71]

The number of parishes in Bishop Adam's diocese is referred to in the article as follows:

> "His diocese comprised of several tens of primarily Galician parishes scattered across the United States and Canada, enters the structure of the Metropolitan District."

In 1939, after four years of "accord" with the American Metropolia, Bishop Adam severed all relations with the Metropolia, favoring complete independence for the Galician and Carpatho-Russian parishes. Working with the Metropolia, he believed, hindered him from governing his parishes autonomously. This was the case because the Metropolia had attempted to persuade the Carpatho-Russian parishes to formally affiliate with it. Another reason for Bishop Adam's decision to leave the Metropolia was his belief that the Carpatho-Russian and Galician clergy

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[70] Exhibit No. PC-37; also see Exhibit No. PC-33 and Exhibit No. PC-35.

[71] See page 24, supra.

and laymen had not been given proper recognition and standing in the Metropolia.[72]

Many of the parishes of Bishop Adam's diocese prior to the 1935 accord with the American Metropolia, did not leave the Metropolia when Bishop Adam withdrew in 1939.

In 1939, the Russian Patriarchate disciplined and deposed Bishop Adam from his positions of Bishop and priest. The reason for the Patriarchate's action against Bishop Adam was never established on the record. However, the record reveals that Bishop Adam's elevation to the position of Bishop in 1922 was never approved by the Patriarchate. The record also reveals that many Russians believed that Bishop Adam improperly ordained and made appointments of priests. It is established that many of the former parishes of Bishop Adam did remain under the jurisdiction of the Metropolia after Adam's withdrawal from the Metropolia in 1939.[73]

(3227a) After being deposed by the Patriarchate and after leaving the Metropolia, Bishop Adam again ruled the parishes which remained loyal to him and did so as the head of the Carpatho-Russian Diocese.

On November 21, 1944, Bishop Adam, was apparently forgiven by the Russian Patriarchate and he formally joined the Russian Patriarchate in that year. He was designated the Archbishop of Philadelphia and Carpatho-Russians on November 21, 1944. On December 12, 1947, he was created the Exarchal Locum-tenens in the United States by the Patriarchate. Bishop Adam, remained in the Patriarchal Archdiocese until his retirement in 1954. He died in 1956.[74]

One of the reasons why Bishop Adam and some Carpatho-Russian parishes joined the Patriarchate in 1944 was that a good possibility existed that Russia Rubra would become a

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[72] See Exhibit No. DC-93.

[73] See Exhibit No. PC-43 and Exhibit No. DC-24.

[74] Exhibit No. DC-88; N. T. 2954, et seq.

part of Russia following World War II. The fact that the Patriarchal throne had been filled in 1943 by Patriarch Sergius with the consent of the Soviet Government also influenced their decision to join the Patriarchate.[75]

(3228a) FINDINGS OF FACT.

1. St. Michael and Archangel Russian Orthodox Greek Catholic Church was founded in Philadelphia, Pennsylvania, in December of 1909.[1]

2. At the time of the said founding of St. Michael's Church, the highest spiritual and administrative authority of the Russian Orthodox Greek Catholic Church was the Holy Synod of Russia, established in 1721 by Peter the Great, Czar of Russia; the Holy Synod had been in continuous existence as the supreme authority of the Russian Orthodox Greek Catholic Church since 1721.[2]

3. The founders and organizers of St. Michael's Church of Philadelphia were, as an ethnic group, Carpatho-Russians and Galicians.

4. From 1909 to 1913, the religious services of St. Michael's parish were conducted at various temporary locations.

5. In 1913, St. Michael's parish acquired two residence properties at Sixth and Spring Garden Streets, Philadelphia, which were converted into a building for religious services.[3]

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[75] Grigorieff, 32-35 and 39.

[1] N. T. 1909.

[2] N. T. 1925.

[3] N. T. 1932 and 2129.

6. In 1923, the properties at Sixth and Spring Garden Streets were taken by the City of Philadelphia, in eminent domain proceedings; the monetary funds realized from the eminent domain award were used to purchase an existing church building at Fourth and Fairmount Streets, Philadelphia, which building has been used by the congregation for religious services to the present time.[4]

(3225a) 7. St. Michael's Church was incorporated in 1915, in accordance with the Pennsylvania Non-Profit Corporation Act, Act of April 29, 1874, as amended; the corporate name of the church is, "St. Michael and Archangel Russian Orthodox Greek Catholic Church"; the corporation Charter was granted by Court of Common Pleas No. 3, Philadelphia County, as of March Term, 1915, No. 5159.

8. The said Charter of St. Michael's Church has never been amended.

9. Article II, Section 2, of the Charter states that the church, "Aeknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North American Diocese" and as such, it accedes to, recognizes and accepts the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly".

10. A Russian Orthodox Greek Catholic Church under the North American Diocese, as referred to in the said provision of the Charter is that body of the Russian Orthodox

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[4] Ibid.

[5] It is not disputed that the North American Diocese was the Archdiocese of the Aleutian Islands and North America.

Church which, when the Charter was adopted, was subject to the canonical authority of the Holy Synod of Russia.[6]

11. Article II, Section 3, provides that "any member . . . who shall disclaim or refuse conformity to said authority shall not be elected, or vote at the election of trustees or other officers or exercise any office or function in concerning or connected with said church or corporation".

12. The "said authority" referred to in the provision of the Charter was the Holy Synod of Russia, the supreme authority of the Russian Orthodox Greek Catholic Church at the time when the corporate Charter was granted.[7]

(3230a) 13. Article V, Section 3, of the Charter provides that "all property both Church and Parochial, real and personal now held or which shall hereafter be bequeathed, devised or conveyed to said corporation shall be taken and held subject to the control and disposition of such constituted officers or representatives thereof as shall be composed of a majority of lay members, citizens of Pennsylvania, having a controlling power according to the Rules and Regulations, usages, canons, discipline and requirements of the Russian Orthodox Greek Catholic Church of the North American Diocese, to which this church is hereby declared to belong".

14. Article V, Section 3, of the Charter is in accordance with the Lay Control of Church Property Act, and the "rules and regulations, usages, canons, discipline and requirements of the Russian Orthodox Greek Catholic Church of the North American Diocese" referred to in Article V, Section 3, of the Charter are the "rules and regulations,

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[6] See N. T. 1955 and 1960.

[7] Ibid.

usages, canons, discipline and requirements of the Russian Orthodox Greek Catholic Church of the North American Diocese," whose supreme authority at the time the corporation Charter was granted was the Holy Synod of Russia.[8]

15. From its founding in 1909 until 1917, when the Holy Synod was replaced and succeeded by the Patriarchate, St. Michael's Church was under the jurisdiction of the Holy Synod and its hierarchical representatives in this country.

16. Upon the restoration of Patriarchate in 1917, St. Michael's Church recognized the first Patriarch, Patriarch Tikhon, as the Supreme Head of the Russian Orthodox Greek Catholic Church. However, the parishioners of St. Michael's Church did not recognize Bishop Alexander or Bishop Platon who were bishops appointed by Patriarch Tikhon to rule the North American Diocese.[9]

17. From 1923 to 1935, St. Michael's Church was (3231a) affiliated with the Carpatho-Russian Diocese which was led by Bishop Adam.[10]

18. During the 1920's, St. Michael's Church was designated as the See and as the cathedral of the Carpatho-Russian Diocese in America.[11]

19. The name of Patriarch Tikhon was elevated during the religious services at St. Michael's Church until his death

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[8] Ibid.

[9] See N. T. 1968, 1974, 1982, and 1988-89. Also see Exhibit No. DC-2, DC-5, DC-7, DC-8, and DC-10.

[10] St. Michael R. O. Cathedral Silver Jubilee Banquet Program, October 10, 1937. Also see Exhibit Nos. DC-7 and DC-8, and N. T. 1982-89.

[11] Ibid.

in 1925, and St. Michael's parish recognized the Russian Patriarch as being its highest ecclesiastical authority. However, the parish did not submit to the judicial and administrative jurisdiction of the Patriarchate during this period.[12]

20. From 1922 until 1954, St. Michael's Church remained loyal and faithful to Bishop Adam, whom the parishioners recognized throughout this period as their ruling bishop; the church also followed the jurisdictional affiliations of Bishop Adam.[13]

21. Bishop Adam served as a priest at St. Michael's Church for a few months in 1921; he was then an Archimandrite of the Carpatho-Russian Diocese whose ruling bishop was Bishop Stephan.[14]

22. From 1923, when Bishop Adam became the ruling bishop of the Carpatho-Russian Diocese, until March 25, 1935, Bishop Adam was not affiliated with the American Metropolia; on March 25, 1935, Bishop Adam entered into an accord or agreement of affiliation with the American Metropolia.[15]

(3232a) 23. During this period, from 1923 to 1935, St. Michael's Church was not affiliated with the American Metropolia and did not recognize Metropolitan Platon, who was the Metropolitan during the said period.

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[12] See Exhibit Nos. DC-2, DC-5, DC-7, and DC-8. Also see N. T. 1968, 1974, 1982, and 1988-89.

[13] N. T. 2954; Exhibit No. DC-88.

[14] N. T. 1997; Exhibit No. DC-88.

[15] See pages 31-32, supra.

24. Bishop Adam and St. Michael's Church did not recognize or affiliate with the "Living Church" or its representative in America, Bishop Kedrovsky.

25. From 1923 until 1935, Bishop Adam governed the parishes of his diocese as an independent diocese. For a part of this period, he recognized the Karlovitz Synod, but he did not submit to the administrative or judicial authority of the Karlovitz Synod, nor did St. Michael's Church affiliate itself with the Karlovitz Synod.[16]

26. From 1923 to 1925, the status of the Russian Orthodox Greek Catholic Church in America was uncertain; both Metropolitan Platon and Bishop Kedrovsky claimed to be the ruling bishop of the Archdiocese of the Aleutian Islands and North America; at the same time, Bishop Adam, also claimed to be the ruling Bishop of the Carpatho-Russian Diocese.

27. At the time of the incorporation of St. Michael's Church, the Carpatho-Russian Diocese was non-existent, however, in accordance with the decrees of the Holy Synod and Emperor Nicholas II of Russia, issued in 1916, St. Michael's Church was permitted to become a member of the Carpatho-Russian Diocese.[17]

28. Metropolitan Platon and Bishop Kedrovsky refused to recognize the Carpatho-Russian Diocese and they both attempted to obtain control over the parishes which were ruled by Bishop Adam.[18]

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[16] Ibid.

[17] See St. Michael R. O. Cathedral Silver Jubilee Banquet Program, October 10, 1937.

[18] Ibid.

(3233a) 29. In accordance with Section 1, Article VIII of its Charter, St. Michael's Church was required to obtain the consent of the Archbishop of the North American Diocese prior to amending its said Charter; under the circumstances it would have been futile for St. Michael's Church to have tried to obtain the consent of either Metropolitan Platon or Bishop Kedrovsky to so amend the Charter in order to formally affiliate St. Michael's parish under the jurisdiction of the said Carpatho-Russian Diocese.

30. In 1925, the parishioners of St. Michael's Church adopted By-Laws which attempted to settle the problem of the confused jurisdictional affiliation of St. Michael's Church.[19]

31. Article 4, Section III, of the By-Laws of St. Michael's Church provides that the parish is "to be under the ecclesiastical jurisdiction of the Russian Orthodox Bishop who is selected by the parish".

32. When the By-Laws of St. Michael's Church were adopted in 1925, the question of which bishop and which hierarchy within Russian Orthodoxy was entitled to rule the North American Diocese (the Diocese of the Aleutian Islands and North America) was an unsettled question which was then being litigated.

33. Article 4, Section III, of the By-Laws of St. Michael's Church attempted to answer this question in so far as St. Michael's parish was concerned, in order that the parish would not be "caught in the middle" of the hierarchical

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[19] The By-Laws were introduced into evidence as Exhibit No. P-2 (They were also labeled as DC-11).

power struggle which was then in progress and which has continued to the present time.[20]

34. Section II, Article 1 of the Charter of St. Michael's Church provides that "the purpose of the corporation is the support of public worship of Almighty God according to the Doctrines and Ritual of the Russian Orthodox Greek Catholic Church".

(3234a) 35. Section II, Article 3, of the By-Laws, provides that the purpose of the parish is "to foster among the Orthodox Christians the Christian faith and morality on the principles of the Holy Scripture written by the St. Apostles, Ecumenical Councils, Holy Fathers and regulations of the Orthodox Church".

36. As provided in the said documents, the Charter pledges adherence to the tenets of the Russian Orthodox Greek Catholic Religion, whereas, the By-Laws refer to adherence to the tenets of the Orthodox Religion in general.

37. The reason for this variance in the said documents is that when the By-Laws were adopted, the administrative and hierarchical status of Russian Orthodoxy in America was greatly confused, due to the fact that several hierarchical groups claimed to be the true representatives of the Russian Church in America.

38. If the By-Laws of St. Michael's Church had stated that the parish was dedicated to Russian Orthodoxy such a provision might have legally obligated the parish to the jurisdiction of one of the several competing Russian Orthodox groups.

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[20] See N. T. 1951, et seq.

39. In Article I, Section 1, of the Charter, the name of the incorporated church is "St. Michael and Archangel Russian Orthodox Greek Catholic Church in the City of Philadelphia", whereas, in the 1925 By-Laws, the name of the church is stated as "Saint Michael Galician-Russian Greek Cath. Parish of Philadelphia, Pa.".

40. The Carpatho-Russian Diocese did not exist in 1915, when the corporate Charter of St. Michael's Church was granted; when the By-Laws of the church were adopted in 1925, the Carpatho-Russian Diocese was in existence and St. Michael's Church was then affiliated with that diocese which was ruled by Bishop Adam.

(3235a) 41. The significance of the name of St. Michael's Church, as stated in the 1925 By-Laws, "Saint Michael Galician-Russian Greek Cath. Parish of Philadelphia, Pa.", is that it sought to designate the parish's affiliation with the Carpatho-Russian Diocese.[21]

42. The Statutes of the American Metropolia provide that before a parish can become a member of the Metropolia, the parish must pass a specific resolution of affiliation stating that it places all of its property under the control of the Metropolia.[22]

43. Several of the parishes which had been in the Carpatho-Russian Diocese prior to 1935, adopted resolutions of formal affiliation with the American Metropolia during the period from 1935 to 1939, when Bishop Adam was affiliated with the Metropolia; however, St. Michael's Church did not adopt such a resolution.

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[21] The words "Carpatho-Russian" and "Galician" designate the same group of people ethnically.

[22] See Article VI, Section 5, of the Statute of the Russian Orthodox Greek Catholic Church of America (Exhibit No. P-13).

44. In 1935, Bishop Adam and the American Metropolia reached an accord or agreement of affiliation which provided that the Carpatho-Russian Diocese headed by Bishop Adam would affiliate with the Metropolia, with the proviso that Bishop Adam would continue to be the ruling bishop of the individual parishes which comprised his Carpatho-Russian Diocese; as a result of this accord or agreement of affiliation, St. Michael's Church became affiliated with the Metropolia through its recognition of Bishop Adam as the ruling bishop of St. Michael's Church.[23]

45. When Bishop Adam disaffiliated from the American Metropolia in 1939, St. Michael's Church also disaffiliated from the Metropolia, and thereafter, as previously, St. Michael's Church continued to recognize Bishop Adam as its ruling bishop, even though many of the former Carpatho-Russian parishes which had been under Bishop Adam's rule had formally joined the Metropolia during the period of affiliation, from 1935 to 1939, and as a result thereof, Bishop Adam's position and influence was greatly diminished.[24]

(3236a) 46. Bishop Adam formally joined the Patriarchal church in 1944.[25]

47. St. Michael's Church, in accordance with their long-standing allegiance to Bishop Adam, became affiliated with the Patriarchal Church in 1945, however, the parishioners never adopted a formal resolution of affiliation nor did they amend the Charter or By-Laws of the church so as to formalize this affiliation with the Patriarchate.

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[23] See pages 31-32, supra.

[24] See Exhibit DC-24.

[25] See page 33, supra.

48. In regard to the affiliation of St. Michael's Church with the Patriarchate, the following statements appear in the minute book of the parishioners' and parish council meetings of 1945:

(a) Annual Meeting of Parishioners, January 28, 1945; "Harry Yurkow moved that hereafter in our parish there be no misunderstandings between the Priest and the Bishop, because at the last annual meeting we had recognized the Patriarch of Moscow. Therefore, the Pastor of our parish must only be under the Bishop which the patriarch appoints to our parish. This motion was passed unanimously."[26]

(b) Meeting of the Parish Council, August 25, 1945: "It was decided unanimously that our St. Michael's Parish and Church recognizes and submits to His Holiness, Patriarch Alexy of Moscow and all Russia, and it was further unanimously decided that the Priest of our Church and Parish must submit to the Holy Patriarch and his rightfully appointed Bishop."[27]

49. From 1945 until 1955, the year in which Father Fedoronko came to St. Michael's Church as the parish priest, St. Michael's remained affiliated with the jurisdiction of the (3237a) Patriarchate. This is established by the following excerpts from the record:

(a) At the Annual Parishioner's Meeting held on December 28, 1947, the parishioners voted that they would accept Bishop Adam as their ruling bishop and that they would remain under the jurisdiction of the Patriarchate.[28]

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[26] Exhibit No. DC-26; N. T. 2071-72.

[27] Exhibit No. DC-28; N. T. 2078.

[28] Exhibit No. DC-30(a); N. T. 2081.

(b) At a Special Parishioners' Meeting held on January 1, 1950, a vote was taken to decide whether the parish was to be under the jurisdiction of the Patriarchate or whether it was to be independent. The majority of the voters cast a vote in favor of the Patriarchal jurisdiction.[29]

50. After becoming a bishop of the Patriarchate, Bishop Adam devoted his attention to the affairs of the Patriarchal Church in America.

51. Bishop Adam's Carpatho-Russian followers were less concerned about establishing a separate Carpatho-Russian organization within the Patriarchate, and were more concerned about settling the ethnic and nationalistic differences which had created a great deal of conflict among Russion Orthodox Americans in the 1920's and 1930's.[30]

52. In 1954, the Patriarchate considered the formation of a Carpatho-Russian Diocese within the organization of the Archdiocese of the Aleutian Islands and North America. The following entry from the minute book of St. Michael's Church indicates that the parishioners of the church were opposed to this plan:[31]

(3238a) Special Meeting—3/14/54—P. Uhniat—J. Sidorsky To accept resolution as follows, passed unan.

"At a special meeting of the Board of Trustees of St. Michael the Archangel Russian Orthodox Greek Catholic Church of 341 Fairmount Ave., Phila., 23, Penna.

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[29] Exhibit No. DC-30 at page 69; N. T. 2081. It should be noted that, at this time, the American Metropolia was not considered as a hierarchy with which the church might affiliate.

[30] Exhibit No. DC-30 at page 162.

[31] Ibid.

held on the 14th day of March, 1954, the following resolution was passed:

'Be it resolved that we are opposed to the division of our Archdioceses or the creation within it or outside it of a "Carpatho-Russian Diocese." We are opposed to such a Diocese because we feel that there is no basis in Canon Law for dividing the Orthodox Faithful of a country into separate camps based on the origin of their forefathers; we are further opposed to the creation or formation of such a Diocese because it would tend to weaken our Exarchate; we are further opposed to it because it would tend to put off into the distant future the ultimate goal which we are hoping and striving for: the formation of a completely ~~united~~ Orthodox Church of America comprising all Orthodox people regardless of their national origin. Be it further resolved that we go on record in support of the formation or creation of vicariates or subdiocese if such are not based on national lines, but include the Orthodox faithful of any national origin who reside within the boarders of any such newly-created or formed vicariate or sub-diocese.'

Prepared by Fr. D. Abramstov"

53. All of the priests appointed to St. Michael's Church from 1923 to 1930 were appointed by Bishop Adam and all were priests of the Carpatho-Russian Diocese, as follows:

1. Reverend Joseph Fedoronko, from 1923 to 1929.

(3239a) 2. Reverend Vladimir Szymanski, from 1929 to 1930.

3. Reverend John Rusyn, from 1930 to 1936.[32]

[32] See N. T. 2000, 2034, 2036 and 2042.

54. In 1936, Bishop Adam appointed Father George Cucura to St. Michael's Church as parish priest.[33] Reverend Cucura, at the time of his appointment was a Carpatho-Russian and was under the jurisdiction of Bishop Adam.

55. When Bishop Adam disassociated from the Metropolia in 1939. Reverend Cucura elected not to disassociate from the American Metropolia and he remained under the jurisdiction of the Metropolia.[34]

56. From 1939 until 1949, the parishioners made various attempts to remove Father Cucura as their parish priest; however, these attempts were unsuccessful, in part, due to the fact that the parish was unable to find a suitable replacement for Father Cucura.[35]

57. On several occasions in 1948, the Parish Council of St. Michael's Church contacted officials of the Exarchate to request that a Patriarchal priest be sent to the church to replace Father Cucura. These requests did not succeed in obtaining a new parish priest.[36]

58. The parish council then wrote to Metropolitan Theophilus, the ruling bishop of the American Metropolia, and requested that Theophilus remove Cucura as the parish priest to St. Michael's Church.[37]

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[33] N. T. 2043-45.

[34] See Exhibit No. DC-21, DC-22 and DC-24.

[35] Exhibit No. DC-30 at pages 17, 19, 28, 34, 37 and 44.

[36] Id. at pages 19, 21, 23, 28-29, 34, 38 and 71.

[37] Id. at pages 30-33, 39, and 71.

59. In November, 1948, the parish received a letter from Bishop Macarius, the highest official of the Exarchate, inquiring whether Father Cucura would leave the parish if the Exarchate provided the parish with a Patriarchal priest, and further, whether the parishioners would amend the jurisdictional provisions of the 1915 Charter of St. Michael's Church in order to formally bring the church into the jurisdiction of the Patriarchal Exarchate in America.[38]

(3240a) 60. Bishop Macarius later reviewed the Charter and the By-Laws of St. Michael's Church and advised the council that St. Michael's Church, in his opinion, could belong to any of the Russian Orthodox jurisdictions then existing in this country; however, he advised the parish that it would be preferable for the parishioners to amend the 1915 Charter in order that the Charter would clearly indicate that St. Michael's Church was under the jurisdiction of the Exarchate of the Patriarchal Church.[39]

61. After receiving Bishop Macarius' recommendation, the parishioners of St. Michael's Church decided not to amend the church Charter, and to further contact the Metropolia, due to the fact that Father Cucura, had advised the parish that he would not leave his position as parish priest unless a priest from the Metropolia replaced him.[40]

62. Shortly thereafter, the Metropolia sent a new priest to the parish, however, the parish decided that it did not wish to have him. A second candidate, Reverend Homka,

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[38] Id. at pages 63 and 71.

[39] Ibid.

[40] Id. at pages 48, 51, and 71.

was then sent to the parish and he was accepted by the Parishioners on a temporary basis.[41]

63. Thereafter, Metropolitan Theophilus ordered Father Cucura to take over Reverend Homka's former parish in Braddock, Pennsylvania.[42]

64. However, Father Cucura refused to follow Metropolitan Theophilus' order and refused to leave St. Michael's Church which caused Metropolitan Theophilus to suspend Father Cucura as a Metropolitan priest, whereupon Cucura left the Metropolia and joined the Patriarchal Church.[43]

65. The Sunday following his change of jurisdiction from the American Metropolia to the Patriarchate, Father Cucura came to St. Michael's Church accompanied by another Patriarchal priest, Reverend Kovalchuk, to perform the religious services. The parish council requested the two priests to leave the church premises but they ignored the council's request and officiated at the services.[44]

(3241a) 66. Later the same week, Father Cucura exchanged parishes with Reverend Kovalchuk without obtaining permission from the parish council; thereafter, Reverend Kovalchuk was formally assigned to the parish by Bishop Macarius who did this without first consulting the parishioners of St. Michael's Church.[45]

67. Father Cucura, Father Kovalchuk and Bishop Adam did not permit Reverend Homka, the priest who had been

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[41] Id. at pages 58-61 and 71.

[42] Ibid.

[43] Ibid.

[44] Ibid

[45] Ibid.

hired by the parish to officiate on the Sundays following Reverend Kovalchuk's appointment as the priest.[46]

68. At a special meeting held on January 1, 1950, the parishioners decided that Reverend Kovalchuk was acceptable to the parish and he was asked to serve as the parish priest also. At this meeting, the majority of the parishoners voted that St. Michael's Church was within the Patriarchal jurisdiction, however, no vote was taken on whether or not the parish should amend their Charter and By-Laws in order to affiliate with the Patriarchate.[47]

69. On January 23, 1950, only a few weeks after the above meeting, the Exarchate transferred Father Kovalchuk to another parish, and on February 3, 1950, the Exarchate appointed Reverend Lampert as parish priest to St. Michael's Church, however, the parishioners were dissatisfied with this change and they requested that Reverend Kovalchuk be assigned to the parish as the permanent priest.[48]

70. This request was not met and the Exarchate next assigned Reverend Sheyko to the parish as Reverend Kovalchuk's replacement without consulting the parish council; thereafter, a special committee of the church decided that Reverend Sheyko was unacceptable to the parish.[49]

71. Reverend Sheyko then gave the keys to the parish to Reverend Rusyn whom Bishop Adam had assigned to St.

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[46] Ibid.

[47] Id. at pages 69-70.

[48] Id. at pages 79 and 90-91.

[49] Id. at pages 81 and 90-91.

Michael's Church without the prior approval of the parishioners of the church.[50]

(3242a) 72. Next, the Exarchate assigned Reverend Lopushinsky to St. Michael's Church and shortly thereafter, the parishioners voted in favor of retaining Reverend Lopushinsky as their parish priest.[51]

73. In 1951, Reverend Lopushinsky resigned as parish priest and Reverend David Abramtzov, a Patriarchal priest, replaced him and he remained at St. Michael's Church until 1954.[52]

74. In 1954, Reverend Abramtzov requested and was granted a transfer to another parish.

75. Reverend Abramtzov was replaced by Archimandrite Dosithei, who was also a Patriarchal priest and Reverend Krochta was assigned to the parish as Archimandrite Dosithei's assistant.[53]

76. In the fall of 1955, Reverend Krochta and Archimandrite Dosithei were transferred to a parish in Arnold, Pennsylvania and the parish was also advised by the Exarchate that they did not have a priest to replace them.[54]

77. The parish was then faced with the problem of securing a priest from another Russian Orthodox jurisdiction. Bishop Chornick and Bishop Anastatias, and Archbishop

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[50] Id. at pages 90-91; N. T. 2110-11.

[51] Ibid.

[52] Exhibit No. DC-30 at pages 112 and 116; N. T. 2114.

[53] Exhibit No. DC-30 at pages 156, 166, 169, and 170; N. T. 2110 and 2115.

[54] Exhibit No. DC-30 at pages 189-193; N. T. 3864-3899.

Leonty, all of whom were ruling bishops of other hierarchies, were contacted by St. Michael's Church. The church also considered the hiring of a Romanian, Greek, or Syrian priest.[55]

78. In seeking a priest from one of the non-Patriarchal jurisdictions, the parishioners of St. Michael's Church did not contemplate a formal change of the hierarchical jurisdiction of the church.[56]

79. The Patriarchal Exarchate granted St. Michael's Church the right to obtain a priest who was not a priest of the Patriarchal Jurisdiction; also the authorities of the (3243a) Exarchate recommended that the parish hire Reverend Alexander Fedoronko, a Metropolitan priest.[57]

80. On October 16, 1955, the parishioners voted authority to the parish council to obtain Father Fedoronko as their parish priest; Alexander Fedoronko's father, Reverend Joseph Fedoronko, had served as the parish priest at St. Michael's Church from 1923 to 1929.[58]

81. On October 18, 1955, a delegation of the Parish Council of St. Michael's Church visited Metropolitan Leonty in New York City and obtained his consent for Father Fedoronko to serve as their parish priest.[59] The Metropolitan Council then assigned Father Alexander Fedoronko to St. Michael's Church and the following letter was sent to Mr. Yurkow, president of the parish council of the church on October 31, 1955:

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[55] Ibid.

[56] Ibid.

[57] Ibid.; also see N. T. 3900-3932.

[58] N. T. 3907.

[59] N. T. 3932, et seq.

"Dear Mr. Yurkow:

The office of the Metropolitan Council wishes to inform you that by resolution of His Eminence, The Most Rev. Metropolitan Leonty (sic) The Parish of Saint Michael the Archangel of Philadelphia, Pa., has been accepted into the jurisdiction of the Russian Orthodox Greek Catholic Church of North America and the Ruling Metropolitan of the above Church His Eminence Metropolitan Leonty, Archbishop of New York, Metropolitan of America and Canada. The Parish is to be under the direct authority of His Grace The Right Rev. Jonah (sic), Bishop of Washington through The Very Rev. Evodkim Poleyoy, Dean of Philadelphia.

Rev. Alexander Fedoronko (sic) has been appointed permanent Pastor of the above Church as of November 20th, 1955."[60]

3244a) 82. Although the above letter indicates that St. Michael's Church was accepted into the jurisdiction of the American Metropolia, the record in this case does not establish that the parishioners of St. Michael's Church voted to join the Metropolia either before or after receipt of the above letter; nor did the church ever apply for admission in the Metropolia; nor was it proven that Father Fedoronko's appointment to the parish was conditioned upon the affiliation of St. Michael's Church with the Metropolia jurisdiction. Father Fedoronko commenced serving as the parish priest to St. Michael's Church in November, 1955; from that date to the present, contacts which St. Michael's Church has had with the Exarchate of the Patriarchal Church in America have been insignificant.

83. From 1955, when Father Fedoronko became the priest of St. Michael's Church, the parish had many jurisdictional

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[60] Exhibit No. PC-64.

contacts with the American Metropolia; some of these contacts were as follows:

a. The parish apparently recognized Bishop Dimitry, a bishop of the Metropolia, as the bishop in charge of their parish.[61]

b. St. Michael's Church was listed as a Metropolitan Church in The Metropolia Yearbooks which were printed during this period.[62]

c. St. Michael's Church made monetary contributions to various ecclesiastical organizations which are within the Metropolia.[63]

d. St. Michael's paid dues to the Metropolia which were designated as "donations" because many of the parishioners were opposed to the per capita assessments of the Metropolia which they believed would indicate that the parish was within the jurisdiction of the Metropolia.[64]

(3245a) e. Delegates from St. Michael's Church attended various conventions, meetings, and Sobors of the Metropolia.[65]

84. The first major dispute regarding Father Fedoronko's service as priest arose in 1962; prior to that year Father Fedoronko was well-liked by the vast majority of parishioners of St. Michael's Church.

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[61] See Exhibit No. PC-54, page 10.

[62] See Exhibit No. PC-25.

[63] An examination of the parish minute book (Exhibit No. 15-2) for the years 1960-1964 indicates that almost all of the recorded contributions which were made during this period were made to religious organizations which were affiliated with the Metropolia.

[64] See Exhibit No. P-156 at pages 50 and 97; N. T. 3994-3996.

[65] See Exhibit No. DC-30 at page 293.

85. At a parish meeting in October, 1962, Father Fedoronko announced to the parishioners that St. Michael's Church was under the jurisdiction of the American Metropolia and was subject to its authority; this position was openly disputed by many members and officers of the parish because they believed that Father Fedoronko came to St. Michael's Church as a priest of the Metropolia but with the understanding that the church was a Patriarchal Church.[66]

86. The 1963 annual meeting of the parish which was to be held on Sunday, January 27, 1963 was postponed by an announcement by Father Fedoronko and Paul Murianka, the Church Warden; until the following Sunday, February 3, 1963 due to a heavy snowfall and a public transportation strike.[67]

87. Regardless of the said postponement about 190 of the parishioners held a meeting on January 27, 1963, and purportedly elected new officers of the parish and passed a resolution to terminate Father Fedoronko's services upon thirty days notice.[68]

88. On February 1, 1963, the plaintiffs filed their Complaint in Equity, seeking to enjoin the effect of the meeting of January 27, 1963, and requested the court to perpetuate two disciplinary decrees issued by the Metropolia against defendants Peter Uhniat and John Sidorsky, both of whom had been lifelong members of the parish. These decrees had been issued by an Ecclesiastical Court of the Metropolia in 1962.

(3246a) 89. In an adjudication dated January 17, 1964, this court held that the election of February 3, 1963, was

[66] Id. at pages 117-118.

[67] See Exhibit No. P-48.

[68] Ibid.

valid and that all actions taken at the January 27, 1963 meeting were invalid, based upon the court's conclusion that the postponement of the January 27, 1963 meeting was proper under the circumstances.

90. From August 18, 1962 until January 21, 1965, the American Metropolia has by decree disciplined and eliminated the membership rights of 178 parishioners of St. Michael's Church, basically because they have refused to recognize the Metropolia as the hierarchical authority of the parish. The Metropolia's decrees have either expelled or excommunicated the said parishioners from the church and all of the decrees affecting these individuals have been issued after the present litigation was commenced with the exception of the decrees pertaining to Peter Uhniat and John T. Sidorsky.

91. There were about 250 to 275 members of St. Michael's Church in 1955, at the time when Father Fedoronko came to the parish as its priest; nearly all of the parishioners who have been disciplined by the Metropolia were members of the parish before November, 1955 when Father Fedoronko joined the parish.[69]

92. From 1956 to 1962, about 225 new members have joined St. Michael's Church, most of whom have been contacted and recruited as members by Father Fedoronko.[70]

93. Prior to the 1960's, the history of St. Michael's Church establishes that the parish council of the church controlled the administrative affairs of the parish.

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[69] Exhibit No. PC-156, at page 173 ("And Now the Truth!").

[70] Ibid.

94. Beginning in 1960, Father Fedoronko, attempted to exert more administrative control over the parish and he also took the position that the parish was subject to the administrative control of the Metropolia hierarchy.

(3247a) 95. At a special meeting held in June, 1960, the parishioners authorized the parish council to obtain a mortgage to construct a new educational building for the parish. The building plan which developed thereafter did not meet with Father Fedoronko's approval and in 1963, he instructed the parishioners not to support the proposed construction of the building.[71]

96. During the period of litigation of this case, from 1963 to the present, the two contending groups of parishioners of St. Michael's Church have been steadfast in their respective positions pertaining to the hierarchal allegiance of the parish—the group of parishioners affiliated with the plaintiffs being in favor of the hierarchy of the American Metropolia, and the group of parishioners affiliated with the defendants being in favor of the hierarchy of the Patriarch of Moscow.

97. The Court has made numerous attempts to amicably resolve this matter between the two contending groups of parishioners of St. Michael's Church, but has met with no success due to the firm positions taken by each of the said groups.

[71] Ibid.

(3248a) DISCUSSION.

The Lay Control of Church Property Act, Act of April 26, 1858, P. L. 328; 10 P. S. §81, as amended,[1] establishes the purposes for which church property must be used and provides in part, as follows:

> "Whensoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised or conveyed to any ecclesiastical corporation, bishop, ecclestiastic or other person, for the use of any church, congregation or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school educational institution, convent, rectory . . . or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been here-

[1] The only basic difference between the present act and the amendatory act of 1913—Act of May 20, 1913 P. L. 242—which was in effect when St. Michael's Church was incorporated is that in the 1913 statute, it was unnecessary for a church to state in its application for a charter that property was to be subject to the control and disposition of lay members. Since the Charter of St. Michael's Church included such a provision, this difference is unimportant. See page 36 supra.

94. Beginning in 1960, Father Fedoronko, attempted to exert more administrative control, over the parish and he also took the position that the parish was subject to the administrative control of the Metropolia hierarchy.

(3247a) 95. At a special meeting held in June, 1960, the parishioners authorized the parish council to obtain a mortgage to construct a new educational building for the parish. The building plan which developed thereafter did not meet with Father Fedoronko's approval and in 1963, he instructed the parishioners not to support the proposed construction of the building.[11]

96. During the period of litigation of this case, from 1963 to the present, the two contending groups of parishioners of St. Michael's Church have been steadfast in their respective positions pertaining to the hierarchal allegiance of the parish—the group of parishioners affiliated with the plaintiffs being in favor of the hierarchy of the American Metropolia, and the group of parishioners affiliated with the defendants being in favor of the hierarchy of the Patriarch of Moscow.

97. The Court has made numerous attempts to amicably resolve this matter between the two contending groups of parishioners of St. Michael's Church, but has met with no success due to the firm positions taken by each of the said groups.

[11] Ibid.

(3248a) DISCUSSION.

The Lay Control of Church Property Act, Act of April 26, 1858, P. L. 328; 10 P. S. 81, as amended,[1] establishes the purposes for which church property must be used and provides in part, as follows:

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[1] The only basic difference between the present act and the amendatory act of 1913—Act of May 20, 1913 P. L. 242—which was in effect when St. Michael's Church was incorporated is that in the 1913 statute, it was unnecessary for a church to state in its application for a charter that property was to be subject to the control and disposition of lay members. Since the Charter of St. Michael's Church included such a provision, this difference is unimportant. See page 36 supra.

tofore lawfully dedicated, or to which it may hereafter, consistently herewith be lawfully dedicated. . .".

(3249a) The above act has been enforced by the Supreme Court of Pennsylvania as meaning that a majority faction within a church cannot divert church property for uses other than the use for which said property was acquired. *Chester Housing Authority v. Ritter*, 344 Pa. 653 (1942); *Canoraro v. Brothers of Order of Hermits of St. Augustine*, 326 Pa. 76 (1937); *First Regular Baptist Church of Indiana, Pa. v. Allison*, 304 Pa. 1 (1931); *Appeal of Roshi*, 69 Pa. 462 (1871); *Appeal of Schnorr*, 67 Pa. 138 (1871).

In *Appeal of Schnorr*, supra 67 Pa. at pages 146-147, Justice Sharswood explained the law of Pennsylvania in regard to diversion of church property, as follows:

> "When property, real or personal, is vested in a religious society, whether incorporated or not, as a church or congregation for the worship of Almighty God and the promotion of piety and godly living, it is a charitable use whether the donors be one or many. The corporation or society are trustees, and can no more divert the property from the use to which it was originally dedicated than any other trustees can. If they should undertake to divert the funds, equity will raise some other trustee to administer them and apply them according to the intention of the original donors or subscribers. When the founders or donors have clearly expressed their intention that a particular set of doctrines shall be taught, or a particular form of worship and government maintained, it is not in the power of individuals having the management of the institution at any time to alter the purpose for which it was founded. When a church has been organized, and been endowed, whether by donation or subscription, as belonging to any particular form of church government it cannot break off from that connection and govern-

ment . . . When, however, it is not described in the original donation or terms of subscription as in connection with or under the ecclesiastical (3250a) jurisdiction of any particular body of believers, it may change its relation, provided there be in such change no radical departure from the original faith or doctrine. . . .

"In church organizations those who adhere and submit to the regular order of the church, local and general, though a minority, are the true congregation and corporation if incorporated. . . . The title to the church property of a divided congregation is in that part of it which is acting in harmony with its own law, and the ecclesiastical laws, usages, customs and principles which were accepted among them before the dispute began, are the standards for determining which party is right. . . . The guarantee of religious freedom has nothing to do with the property. It does not guarantee freedom to steal churches. It secures to individuals the right of withdrawing, forming a new society, with such creed and government as they please; raising from their own means another fund and building another house of worship; but it does not confer upon them the right of taking the property consecrated to other uses by those who may now be sleeping in their graves."

It is well settled that the parishioners who adhere to and act in accordance with the established order of a church's customs, laws, and usages, which were established and were accepted by the church before a dispute or split arises, comprise the true congregation of that church, and as such, whether they are in the majority or minority, they are entitled to the use, possession, and control of the church property. On the other hand, parishioners who depart therefrom, are no longer entitled to their interest in the church property. *Nagle v. Miller*, 275 Pa. 157 (1922);

Chrapko v. Kobasa, 271 Pa. 447 (1921); *Greek Catholic Church v. Orthodox Greek Church*, 195 Pa. 425 (1900); *Appeal of Roski*, supra; *Appeal of Schnorr*, supra.

(3251a) It is also well established that for a division of property to occur, there must be a substantial departure from the doctrines and practices which the church, by trust, charter, or otherwise, is obligated to follow and maintain. *Church of God at Markleysburg v. Church of God at Markleysburg*, 355 Pa. 478 (1947); *First Regular Baptist Church of Indiana, Pa. v. Allison*, supra.

A congregation which is organized and which holds its property as a part of a particular religious denomination, or which holds its property in subordination to the government or hierarchy of a religious denomination, and which severs its connection with that denomination, without just cause, thereby forfeits its right to use the church property to those persons or parishioners who desire to maintain the original status of the church. *First Regular Baptist Church of Indiana, Pa. v. Allison*, supra; *Appeal of McAulney*, 77 Pa. 397 (1875). Consequently, property dedicated to the use of a church of a particular denomination cannot be diverted to the use of a different denomination.

It is also well settled that, "A court of equity cannot decide ecclesiastical questions unless property rights are involved, and then only insofar as is necessary to adjudicate the property rights. But where there is a division in a congregation and the title to its property comes into question, it is the duty of a court of equity to determine in which faction title to the property vests." *First Church of Brethren of Lewistown v. Snider*, 367 Pa. 78, 96 (1951).

The parties in this case agree that St. Michael's Church was incorporated as a Russian Orthodox Church belonging to the North American Diocese. Both parties claim that, pursuant to the jurisdictional terms of the Charter, adopted

by St. Michael's Church in 1915, they are entitled to the use and control of the church property.

The defendants contend that any use which the Metropolia has made or will make of the property of St. Michael's Church amounts to a diversion of the church property under the (3252a) Lay Control of Church Property Act, supra. Their claim is based upon the undisputed fact that in 1917, when the Patriarchate replaced the Holy Synod as the Governing body of the Russian Church, the doctrines and tenets of the Russian Church did not change. Consequently, they contend that the change was merely an organizational change in the supreme hierarchy of the church, and that the change was accepted with great joy by the vast majority of Russian Orthodox believers throughout the world. The fact that a Patriarch existed prior to 1721 supports the defendant's position that the restoration of the Patriarchate was merely an organizational change in the hierarchy.

The defendants also contend that since the Patriarchate never relinquished control over the North American Diocese, and that since the ecclesiastical doctrines and religious practices of the Patriarchate are basically the same as those of the Holy Synod, those parishioners who claim to be under the jurisdiction of the Patriarchate are entitled to the use and control of the property of St. Michael's Church, in accordance with the terms of the 1915 Charter of the church, which has never been amended.

However, the defendant's argument fails to take into consideration the tremendous impact which the Bolshevik Revolution had upon the American parishes of the Russian Orthodox faith.

The plaintiffs contend that the hierarchical organization acknowledged by St. Michael's Church in its Charter, the North American Diocese of the Russian Orthodox Church, evolved into the American Metropolia. According to the plaintiffs, The American Metropolia is the only hierarchical

group in the United States which is acting in harmony with the laws, usages and religious customs accepted by the parishioners of St. Michael's Church when it was incorporated in 1915. Furthermore, plaintiffs contend that the American Metropolia is the denominational or jurisdictional head of St. Michael's Church. The plaintiffs indirectly take the position that the Patriarchate of Moscow since 1924, has had only a limited amount of religious (325a) freedom, and that any group which is controlled by the Patriarchate in America is subject to the political influence of the Soviet Government. The plaintiffs claim that the Metropolia was granted the authority to govern the North American Diocese autonomously pursuant to the decree issued by Patriarch Tikhon in 1920. They also contend that the Patriarchate, because of political conditions in the U. S. S. R., was not and is not free to act and that because St. Michael's Church was incorporated as a church belonging to the North American Diocese and because its Charter was never amended, the American Metropolia, pursuant to the terms of the Charter of St. Michael's Church is the jurisdictional and hierarchical head of St. Michael's Church. This argument is based upon the unsupported assumption that the Patriarchate relinquished all control over the parishes in America from 1924 to 1933, and that any control exerted by the Patriarchate after 1933 was a mere sham.

Our review of this record establishes that the Patriarchate did not relinquish control over the American parishes from 1924 to 1933.[2] Secondly, since 1933, the Patriarchate has been continuously represented in America.[3] Thirdly, whether or not the Patriarchate had representatives in America is insignificant, for it merely granted the American Diocese the temporary right to function autonomously. This

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[2] See pages 22-23, supra.

[3] See pages 27-29, supra.

grant of power was also conditioned upon the right of the Patriarchate to rescind the grant of temporary power to the American Diocese. The Patriarchate did, in fact, in 1933 and 1934, rescind the temporary power given to the American Diocese.[4] Also it must be noted that the courts of this country could not hold that the Russian Patriarchate was not free to act nor could the courts hold that any decree which the Patriarchate has issued while the Soviet Government has been in power is not binding upon the American parishes, due to the fact that such a holding would conflict with the provisions of the First Amendment of the United States Constitution, which guarantee the freedom of religion in this country. Such a holding would have the practical effect of requiring all Russian Orthodox parishes which were chartered before the restoration of the Patriarchate in 1917, to submit to the jurisdiction of the American Metropolia for the reason that the Patriarchate is a "tool" of the Soviet Government.

(3254a) In accordance with the First Amendment to the United States Constitution and the provision for freedom of religion in the Pennsylvania Constitution, a parish, organization, or individual has the right to belong to any association which is or which may be to some degree, controlled by the Soviet Government, as long as that control does not present a "clear and present" danger to the national security and welfare of this country.

A significant difference between the American Metropolia and the Exarchate of the Patriarch of Moscow is that the Metropolia refuses to submit to the administrative and judicial jurisdiction of the Patriarchate although, the Metropolia recognizes that the Patriarch of Moscow is the spiritual head of its parishes. Thus, the American Metropolia functions autonomously, while the Patriarchal Exarchate (Archdiocese of the Aleutian Islands and North America)

[4] See pages 21-22, supra.

recognizes the administrative and judicial authority of the Patriarchate of Moscow.

When St. Michael's Church was incorporated, the supreme authority of the Russian Orthodox Church was the Holy Synod. At that time, the members of the church did not foresee the occurrence of the Russian Revolution and the establishment of a communistic state in Russia. It is therefore inconceivable that the founding members ever considered what they would do in the event that their Mother church in Russia was subjected to the control of a communistic government, which was opposed to religious worship. Consequently, whether or (3255a) not St. Michael's Church should have submitted to the judicial and administrative authority of the religious governing powers in the Soviet Union, involves an important issue which cannot be decided on the basis of the provisions of the Charter of St. Michael's Church. The only way this question can be resolved is to weigh and consider the actions which were taken by St. Michael's Church after the Soviets obtained firm control of Russia, in order to determine what was done by the parishioners to reconcile the jurisdiction problem.

The defendants contend that the history of St. Michael's Church, from 1917 until at least 1955, indicated that St. Michael's was a Patriarchal Church, and that this affiliation was not only in accord with the 1915 Charter, but that it establishes that St. Michael's Church has always been a Patriarchal Church. The record conflicts with this interpretation of the history of the church. From 1923, the year in which Bishop Adam became the ruling bishop of St. Michael's Church, until 1944, the year in which Bishop Adam joined the Patriarchate, St. Michael's Church was under the jurisdiction of the Carpatho-Russian Diocese

headed by Bishop Adam. Whether or not Adam was canonically consecrated as a bishop is unimportant due to the fact that he ruled his parishes independently, throughout the major portion of this period, except for the period of accord with the Metropolia, from 1935 to 1939, and except for some prior connections with the Karlovitz Synod. St. Michael's Church throughout this period, remained loyal to Bishop Adam who was allowed, by the Patriarchate, to be the ruling bishop of the Carpatho-Russian Diocese until 1939, when he was deposed from office by the Patriarchate. From 1939, when he was deposed until 1944, when he joined the Patriarchate, Bishop Adam continued to rule those Carpatho-Russian parishes which remained loyal to him, regardless of the difficulties he had had with his status. It should be noted that the ruling bishops of the Metropolia were also deposed by the Patriarchate. Metropolitan Platon was defrocked in 1933 and Metropolitan Theophilus was (3256a) defrocked in 1935. Of course, in spite of these defrockings. Platon and Theophilus continued to rule the Metropolia. We do not agree with the contention of the Metropolia that when Bishop Adam brought his parishes into the Metropolia in 1935, the parishes thereupon became formally bound to remain in the Metropolia.

In 1936, the Metropolia merged with the Karlovitz Synod which merger lasted until 1946, when Theophilus severed ties with that group. Should this court find that the parishes of Bishop Adam are legally bound to submit to the jurisdiction of the Metropolia, then, to be consistent, the court would have to find that the parishes under the control of the Metropolia, before 1936, are bound to submit to the jurisdiction of the Karlovitz Synod (The Russian Orthodox Church Outside of Russia) due to the Metropolia-Karlovitz Synod merger of 1936. However, this issue is not before the court.

The first indication of how the parishioners of St. Michael's Church reacted to the events of the Russian Revolution is found in the by-laws adopted by the parish in 1952. In light of the situation and the problems facing St. Michael's Church, the parish adopted a by-laws provision which establishes an intention to be jurisdictionally independent. This intention was not that the church be independent on the parish level, but that it be independent on the diocese level. In effect, the parishioners decided to submit to that Russian Orthodox jurisdiction existing in America which the majority of the parishioners might decide to select. The jurisdictional selection would be based upon the bishop whom the parish decided to follow. This 1925 by-laws provision did not conflict with the provisions in the church Charter on jurisdiction for, as was stated, supra, there was only one jurisdiction in America when the Charter was adopted. Whereas, there were several competing jurisdictions in this country when the by-laws were adopted. The purpose of the by-laws provision on jurisdiction was not an attempt to alter the context of the jurisdictional provision in the Charter, but amounted to a clarification of the Charter provision on jurisdiction in light of the unexpected events which occurred after the Charter was adopted and it is binding upon the parishioners who want to (3257a) exercise the privilege of using and controlling the church property. As stated previously, the Charter and by-laws of the church have never been amended.[5]

Throughout this litigation, the plaintiffs have constantly contended that an Orthodox parish cannot be independent. If their argument is correct, since St. Michael's Church was

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[5] Despite the fact that it would have probably been impossible for the parishioners to amend the 1915 Charter when the by-laws were adopted in 1925 (see page 39 supra), it was not mandatory that the Charter be amended, for the by-laws provision on jurisdiction did not conflict with the Charter.

incorporated as an Orthodox parish, the framers of the Charter clearly showed an intent of adhering to the hierarchy of the Russian Orthodox Church and the Holy Synod. Nothing appearing in the record prior to the year 1955 indicates that the parish acted independently on the parish level, for the parish always had a ruling bishop which it recognized as being their jurisdictional leader.

Clearly the incorporators of St. Michael's Church did not envision that the Bolshevik Revolution would cause more than one Russian Orthodox jurisdiction to exist in the United States. Whether or not St. Michael's Church should remain independent, in the sense of being free to select its hierarchical jurisdiction was not considered by the incorporators. However, this was the issue which confronted the parishioners when they adopted the by-laws of 1925 (see page 39, supra). The solution adopted in their by-laws, of being free to select a bishop and hierarchical jurisdiction was pragmatic in light of the competing hierarchical systems which developed within Russian Orthodoxy following the Russian Revolution. To argue that the provisions of the 1915 Charter prevented the parishioners from selecting the jurisdiction to which they would submit is completely unrealistic due to the fact that this problem was never contemplated in 1915.

From the adoption of their by-laws in 1925 until (3258a) Bishop Adam joined the Patriarchate in 1944, the parishioners complied with their Charter and by-laws remaining under the jurisdiction of Bishop Adam—the bishop whom they had selected.

When Bishop Adam joined the Patriarchate, the parishioners also complied with the jurisdictional provisions of their Charter and by-laws by voting to submit to the jurisdiction of the Patriarchate. Implicit in this vote was the decision to accept a Patriarchal ruling bishop.

In 1955, the ruling bishop of the Patriarchate authorized the parishioners to secure a Metropolitan priest, Father

Alexander Fedoronko, because there were no Patriarchal priests available. However, the Patriarchate never gave the parish authority to submit to the jurisdiction of a Metropolitan bishop. Neither was a vote ever taken by the parish while Father Fedoronko was its priest on whether the parishioners were in favor of submitting to the jurisdiction of the Metropolia.

After Father Fedoronko assumed his duties at St. Michael's Church, almost all of the jurisdictional contacts of the parish were with the Metropolia.

If the parish, prior to the issuance of the disciplinary decrees against any of the parishioners had voted in favor of selecting the ruling bishop of the Metropolia as their ruling bishop, this court would have to hold that the disciplinary decrees issued by the Metropolia were valid and that the Metropolia was the proper jurisdictional head of St. Michael's Church.[6] Such a vote would have complied with the jurisdictional provisions of the parish Charter and the by-laws which clarified and updated the Charter provisions.

There is no provision in the Charter or by-laws which indicates that the framers of these instruments intended to (3259a) grant the parishioners the authority to act independently on the parish level—functioning as a church without a ruling bishop. On the contrary, one requirement of the by-laws as well as the Charter, though not overtly stated, is that the parish must always be under the jurisdiction of a ruling Russian Orthodox Bishop.

The requirement that the church must be under the ruling bishop selected by the parish must be interpreted as meaning that the parish had to vote on the question of their ruling bishop, if the parish desired to submit to the author-

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[6] Metropolitan Leonty, until his recent death was the ruling bishop of the Metropolia. He assumed this position after Metropolitan Theophilus died in 1951. Leonty's successor, Metropolitan Ireney, was elected in 1965.

ity of a ruling bishop who was in a different jurisdiction from the bishop with whom the parish had been recently affiliated.

Affiliation without a vote would therefore violate this requirement. Since the parishioners never voted on whether they would submit to the ruling bishop of the Metropolia, they failed to comply with the above requirement by allowing the Metropolia to take over the jurisdiction of the parish. Such action also amounts to a diversion of church property from the doctrines and practices which St. Michael's Church, pursuant to the terms of its Charter and by-laws, was obligated to follow. *Church of God at Markleysburg v. Church of God at Markleysburg*, supra; *First Regular Baptist Church of Indiana, Pa. v. Allison*, supra. Such a diversion also constituted a substantial departure from the doctrines and practices appearing in the Charter and by-laws and therefore, constituted an illegal transfer of church property to another jurisdiction in violation of the Lay Control of Church Property Act.

Consequently, any disciplinary decrees issued by the Metropolia which have deprived any of St. Michael's parishioners of membership rights in the parish or which have deprived parishioners of the right to hold office or the right to participate in parish activities are ineffective, for they amount to an attempt by the Metropolia to prevent the disciplined members from using or enjoying church property.

After Father Fedoronko became the parish priest in (3260a) November, 1955, the parish apparently jurisdictionally affiliated with the Metropolia and, in effect, informally seceded from the Patriarchate. Like the selection of a bishop from another jurisdiction, the act of seceding from a jurisdiction with which the parishioners had formerly affiliated, requires a majority vote of the parishioners. If this were not so, the by-laws provision on jurisdiction would become a nullity. Consequently, the act of seceding from the Exarchate of the Russian Patriarchal Church

amounted to a diversion of church property under the Lay Control of Church Property Act.

The Exarchate of the Patriarchal Church is the jurisdiction with which the parish had been affiliated from 1945 to 1955, when Father Fedoronko joined the church as its priest.

Discussion Of The Equitable Doctrine of "Laches".

The plaintiffs claim that the equitable doctrine of "laches" should be applied in this case to prevent the defendant-counterclaimants from obtaining any relief. In *Gabster v. Mesaros*, 422 Pa. 116; 220 A. 2d 639 (1966), the Pennsylvania Supreme Court held that the doctrine of laches was applicable to disputes among church members and held that such application of the doctrine of laches did not conflict with the Lay Control of Church Property Act:

> "By applying the doctrine of laches to the present facts, we are not holding that church property can legally be diverted from the purpose for which it was acquired and dedicated, rather do we rule that courts of equity will not grant relief to individuals who sleep on their rights for an unreasonable period of time to the prejudice of others involved. Further, Section 2 of the Act of June 20, 1935, supra, 10 P. S. §81(a) (the Lay (3261a) Control of Church Property Act), which is controlling in the issue of how church property shall be held, specifically places disputes in regard thereto within the jurisdiction of the courts of equity. It is reasonable to assume, therefore, that the legislature intended that all equitable principles shall apply, including the doctrine of laches, unless their application would destroy the effect of the rule of law enunciated in the statute" (220 A. 2d at page 642).

In the *Gabster* case, the church involved in the dispute was incorporated as a Greek Catholic Church. It was in

union with The Holy See at Rome and recognized the Pope as being its spiritual head. In 1935, Bishop Chornock founded a separate sect or denomination which was called the "Carpatho-Russian Greek Catholic Church of North and South America". (The parishes that joined this organization had formerly been under the jurisdiction of the Pope and thus, they differed from the Carpatho-Russian parishes headed by Bishop Adam). Bishop Chornock broke away from the Roman Catholic Church and brought his parishes under the jurisdiction of the Eastern Patriarch at Istanbul. Then, in 1935, Bishop Chornock persuaded the church involved in the *Gabster* case to join his denomination and to abandon its ties with the Roman Catholic Church. From 1935 until 1964, the year in which the plaintiffs in the *Gabster* case commenced litigation, the parish remained under the jurisdiction of Bishop Chornock. The plaintiffs, who were members of the congregation, claimed that Bishop Chornock's actions constituted an illegal diversion of church property away from the original purposes for which the church was organized, and requested the court to restrain any further diversion of church property. The lower court held that the relief sought by the plaintiffs was precluded by the doctrine of laches. The Supreme Court affirmed.

As stated by the Supreme Court, the application of laches does not depend upon the passing of any set period of time. (3262a) but rather, depends upon the facts of each case and whether or not "the complaining party or parties are chargeable with want of due diligence in failing to institute or prosecute the claim. . . . Ordinarily, the passage of time, in itself, is insufficient to warrant the application of the doctrine, and it must further appear that injury or material prejudice has resulted to the defendant through the delay. . . . However, where the delay in asserting the claim involves a grossly unreasonable time, the necessity for spe-

effect regarding prejudice or injury becomes less crucial" (220 A. 2d at page 641).

The major factual difference between the present case and the *Gabster* case is that, at the maximum, less than eight years passed before the defendants started legal action to obtain court relief on the basis of their counterclaim. In the *Gabster* case, almost thirty years passed before the plaintiffs raised an objection to the change in jurisdiction. The fact that thirty years passed before legal action was started played a very important role in the Supreme Court's decision:

> "Where, as in the instant case no objection has been raised for thirty years to the form of religious worship practiced in the subject church, to permit such objections to be asserted at this late date in a court of law would lead to multiple law suits and lack of finality as to church property" (220 A. 2d at page 643).

Unlike the delay in the *Gabster* case, the delay in the present case does not involve a "grossly unreasonable time". The purported assimilation of the parish into the jurisdiction of the Metropolia could not have begun until Father Fedorenko openly stated in 1962 at a parish meeting that the church was under the jurisdiction of the Metropolia. This action was commenced shortly thereafter.

The plaintiffs have not demonstrated that they will be materially prejudiced or injured because of any delay on the part of the defendants in asserting their counterclaim. In their (3263a) original answer to plaintiffs' complaint, the defendants denied that the parish was in the jurisdiction of the Metropolia. The position which the defendants alleged in their answer that the parish was an independent parish was later amended to allege that the parish was under the jurisdiction of the Russian Patriarch and his representatives in this country.

One reason why laches was applied in the *Gabster* case was that the defendants had contributed substantial sums of money with the belief that the church would remain under the jurisdiction of Bishop Chornock. In this case, a different situation is present. The defendants and counterclaimants and many of their parishioners who were disciplined by the Metropolia were among the leaders of the parish prior to this litigation. A large portion of the parishioners who favor the Metropolia are, by comparison, relatively new members of the church who were recruited by Father Fedoronko. On the other hand, almost all of the parishioners who have been disciplined were members of the church before Father Fedoronko joined the parish as its priest. For many years this latter group donated substantial sums of money to the church and worked hard to make St. Michael's Church a prosperous parish.

If the doctrine of laches were applied it would materially prejudice and injure the defendant-counterclaimants to this case more than the group of parishioners who are allied with the plaintiffs.

(3264a) CONCLUSIONS OF LAW.

1. St. Michael and Archangel Russian Orthodox Greek Catholic Church was founded in Philadelphia, Pennsylvania, in 1909, as a Russian Orthodox Greek Catholic Church under the supreme hierarchical authority of the Holy Synod of the Russian Orthodox Greek Catholic Church.

2. St. Michael and Archangel Russian Orthodox Greek Catholic Church was incorporated in Pennsylvania in 1915, pursuant to the Non-Profit Corporation Act, and the Corporate Charter of the said church was granted in the name of "St. Michael and Archangel Russian Orthodox Greek

Catholic Church", by Court of Common Pleas No. 3, Philadelphia County, March Term, 1915, No. 5159.

3. The Charter of St. Michael and Archangel Russian Orthodox Greek Catholic Church states that the said church was incorporated as a parish within the North American Diocese of the Russian Orthodox Greek Catholic Church and that it recognizes and accepts the Constitution, Canons, Doctrines, Discipline and Worship of the said hierarchical diocese, which, in turn, was a diocese created and existing by virtue of the canonical authority of the Holy Synod of the Russian Orthodox Greek Catholic Church.

4. In 1917, the Holy Synod of the Russian Orthodox Greek Catholic Church was abolished and the supreme authority of the Russian Orthodox Greek Catholic Church became vested in the Patriarchate which was re-established* in 1917, to replace the Holy Synod as the supreme authority of the Russian Orthodox Greek Catholic Church.

5. St. Michael and Archangel Russian Orthodox Greek Catholic Church never amended its Charter of 1915 after the re-establishment of the Patriarchate in 1917, so as to formally (3265a) recognize and conform with this change in the supreme authority of the Russian Orthodox Greek Catholic Church, nor did St. Michael and Archangel Russian Orthodox Greek Catholic Church recognize and accede to the authority of Bishop Alexander and Bishop Platon who were appointed by Patriarch Tikhon, the first Patriarch of the Russian Orthodox Greek Catholic Church elected after the re-establishment of the Patriarchate in

* The word "re-established" is used due to the fact that the Patriarchate had existed as the supreme authority of the Russian Orthodox Greek Catholic Church prior to 1721, when the Holy Synod was created by Peter the Great.

1917, to rule the North American Diocese, the said diocese being formally designated as the "Archdiocese of the Aleutian Islands and North America".

6. In 1925, the parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church adopted By-Laws which provided that the church would thereafter be affiliated jurisdictionally with the Russian Orthodox Greek Catholic bishop whom they selected and that the church would follow the jurisdictional affiliation of the said bishop whom the parishioners selected. These provisions of jurisdictional affiliation of St. Michael and Archangel Russian Orthodox Greek Catholic Church did not conflict with the Charter of the church, nor with the Lay Control of Church Property Act.

7. From 1923 to 1955, the parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church recognized Bishop Adam as the ruling bishop of their parish and their jurisdictional affiliations were the same as and followed exactly the jurisdictional affiliations of the said Bishop Adam, and in accordance with the By-Laws of 1925. The jurisdictional affiliations of the parish were as follows:

from 1923 to 1935, the Carpatho-Russian Diocese, which was ruled independently by Bishop Adam;

from 1935 to 1939, the Carpatho-Russian Diocese of Bishop Adam as affiliated with the American Metropolia in accordance with the agreement or accord between Bishop Adam and the American Metropolia of 1935;

from 1939 to 1944, the Carpatho-Russian Diocese of Bishop Adam;

(3266a) from 1945 to 1955, the Exarchate of the Patriarchal Church, in accordance with Bishop Adam's formal joining of the Patriarchal Church in 1944;

from 1954 to 1955, the Exarchate of the Patriarchal Church following Bishop Adam's retirement from the Exarchate in 1954.

Each of the above stated jurisdictional affiliations of St. Michael and Archangel Russian Orthodox Greek Catholic Church was valid and proper jurisdictional affiliations under the By-Laws and Charter of the church and the said jurisdictional affiliations did not conflict with the Lay Control of Church Property Act.

8. The By-Laws of St. Michael and Archangel Russian Orthodox Greek Catholic Church require that the parish be affiliated with that Russian Orthodox Greek Catholic bishop who is selected by the parishioners; the court concludes that the enforcement of this provision requires that the majority of the parishioners vote for or adopt a formal resolution of selection of the Russian Orthodox Greek Catholic bishop with whom they decide to affiliate jurisdictionally.

9. On January 28, 1945, at the Annual Meeting of parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church the parishioners voted unanimously to recognize the Patriarch of Moscow as the supreme authority over their parish; on December 28, 1947, by a unanimous vote of the parishioners, at the Annual Meeting of the parishioners, the parish reaffirmed its jurisdictional affiliation with the Patriarchate and its recognition of Bishop Adam as the ruling bishop of their church; again, on January 1, 1950, at a Special Meeting of the parishioners, a majority vote of the parishioners reaffirmed the jurisdictional affiliation of the parish with the Patriarchate; each of the above decisions by vote of the parishioners that St. Michael and Archangel Russian Orthodox Greek Catholic Church was under the jurisdiction of the Patriarchate, was

in accordance with the By-Laws and Charter of the church, and did not conflict with the Lay Control of Church Property Act.

(3267a) 10. In 1955, the parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church, having first obtained the consent of the Patriarchal Exarchate, employed Father Alexander Fedoronko as the parish priest; and he has continued to serve in that position to the present time; Father Fedoronko is a priest under the American Metropolia.

11. Although from 1955 to the present, St. Michael and Archangel Russian Orthodox Greek Catholic Church has had numerous contacts and dealings with the hierarchical organization and with hierarchical officials of the American Metropolia, the parishioners of the church have never voted by at least a majority vote nor have they ever adopted a resolution to affiliate jurisdictionally with the American Metropolia, and thus, the affiliation of St. Michael and Archangel Russian Orthodox Greek Catholic Church with the American Metropolia has been, since 1955 to the present, a de facto affiliation only and the said affiliation has not properly complied with the Article 4, Section III of the By-Laws of the church, due to the fact, as stated above, that no vote of the parishioners has ever been recorded so as to formalize the said affiliation with the American Metropolia, nor has a resolution ever been passed to formalize the said affiliation with the American Metropolia.

12. The said de facto affiliation of St. Michael and Archangel Russian Orthodox Greek Catholic Church with the American Metropolia, from 1955 to the present time, has been and is in violation of the Lay Control of Church Property Act, and has been and is in violation of the Charter and By-Laws of the said church.

13. The letter written by Metropolitan Leonty to the President of the Parish Council of St. Michael and Archangel Russian Orthodox Greek Catholic Church, dated October 31, 1955, and contained in the record of this case as Exhibit "PC-64", in which the Metropolitan advised the President of the Parish Council that St. Michael and Archangel Russian Orthodox Greek Catholic Church had been accepted into the jurisdiction of the American Metropolia by resolution of the (3268a) Metropolitan, and that Reverend Alexander Fedoronko had been appointed as pastor of the church, did not result nor cause St. Michael and Archangel Russian Orthodox Greek Catholic Church to be formally affiliated with the American Metropolia since it was not thereafter affirmatively approved by the parishioners of the church in so far as the suggestion of jurisdictional affiliation is concerned, in that no vote of approval was ever recorded thereon by the parishioners, nor was a resolution adopted to formalize the said affiliation by the means of a majority vote of the parishioners.

14. The decrees of the American Metropolia and of its agencies and officials which have purported to discipline, expel, excommunicate or restrict in any way or by any means the individual members and individual parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church or their families, from participating in the affairs, functions, meetings, offices, rights and religious services of whatever nature and of whatever kind, were issued without valid and proper authority due to the fact that the parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church never voted to formally affiliate with the American Metropolia nor did they ever adopt a resolution of formal affiliation with the American Metropolia, and furthermore, the said decrees of the American Metropolia and of its agencies and officials deprive the said members, parishioners and/or their families from enjoying

the property of the church in violation of the Lay Control of Church Property Act. The said decrees are, accordingly, null and void.

15. The last valid, formal jurisdictional affiliation of St. Michael and Archangel Russian Orthodox Greek Catholic Church was with the Exarchate of the Patriarchal Church, Archdiocese of the Aleutian Islands and North America, in accordance with the votes of the parishioners, as recorded at the various meetings of the parishioners held in 1945, 1947 and 1950.

16. The equitable doctrine of laches does not apply to the issues raised in this case.

(3269a) 17. A valid, formal and fully enforcible jurisdictional affiliation of St. Michael and Archangel Russian Orthodox Greek Catholic Church may be accomplished in the future only in the event that a formal resolution of the parishioners is passed, by at least a majority of the parishioners present and voting at such a meeting, that the church shall no longer be under and subject to the authority of the Exarchate of the Patriarchal Church and that the church shall thereafter, be under and subject to the authority of the American Metropolia, or some other hierarchical organization of the Russian Orthodox Greek Catholic Church. Those parishioners and members of the church who shall be entitled to vote upon a resolution calling for the formal change in jurisdiction of the church, or calling for the continuance of the jurisdiction of the church under the Exarchate of the Patriarchal Church, shall be limited to those members and parishioners who were "full members" of the parish on February 1, 1963, the date of the commencement of this litigation, and pursuant to Section IX, Article 14 of the By-Laws of the church. The scheduling and holding of

such a meeting shall comply with Section XII, Article 25 of the By-Laws of the church.

(3270a) DECREE NISI.

AND NOW, TO WIT, this Dec. 16, 1966 day of Decembe 1966, a Decree Nisi is entered in this case in accordanc with the Findings of Fact and Conclusions of Law containe in this Adjudication.

The Prothonotary shall give notice to the attorneys fo the litigants in this case, to wit: Ivan Michaelson Cza Esquire and John S. Manos, Esquire of the filing of th Adjudication and Decree Nisi, and he shall further notif the said attorneys that unless exceptions are filed heret within twenty (20) days from the date of this Adjudicatio and Decree Nisi, that a Final Decree shall be duly entere upon the record by the said Prothonotary.

RAYMOND PACE ALEXANDER,

APPENDIX B.

IN THE COURT OF COMMON PLEAS NO. 3.
(Hearings conducted before C. P, No. 4.)
Philadelphia County.

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, A PENNSYLVANIA CORPORATION, VERY REVEREND ALEXANDER FEDORONKO, AND PAUL MURIANKA, Plaintiffs, v. PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, AND ANDREW SHAST, Defendants, and JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ AND ANDREW COSS, Added Defendants.	December Term, 1962. No. 3343. In Equity.

OPINION OF THE COURT EN BANC

RAYMOND PACE ALEXANDER, Chancellor in Equity,
FRANCIS SHUNK BROWN, JR., P. J.,
CHARLES L. GUERIN, J.

ST. MICHAEL & ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, et al., v. PETER UHNIAT, et al., and JOHN PATRICK, et al.	Court of Common Pleas No. 3, December Term, 1962, No. 3343, In Equity.

OPINION.

October 4, 1967. RAYMOND PACE ALEXANDER, J.

Concur:

FRANCIS SHUNK BROWN, JR., P. J.
CHARLES L. GUERIN, J.

This action in equity is before the court upon: (1) the exceptions of the plaintiffs to the Adjudication of the Chancellor, Raymond Pace Alexander, J., dated December 16, 1966; (2) the defendants' exceptions to the Adjudication of the Chancellor; (3) the defendants' petition for clarification of the said Adjudication; (4) the plaintiffs' exceptions to the Report of the Court Representative concerning the court supervised election and balloting of May 7, 1967, at the premises of the church, and (5) the

defendants' exceptions to the Report of the Court Representative.

Argument has been heard upon each of the above matters before the Court en Banc. The court is now prepared to adjudicate upon these matters, and to enter a final decree in this very troublesome and lengthy litigation, which commenced in 1963.

The court has carefully reviewed the very comprehensive and detailed Adjudication of Judge Alexander, which fairly and thoroughly discusses, in great depth, the ecclesiastical jurisdiction issues and problems which have caused a serious and very unfortunate division among the parishioners of the plaintiff church.

As established by the record in this case, the conflicting ecclesiastical jurisdictions involved in this litigation and to which the contending groups of parishioners claim allegiance, are the Russian Orthodox Greek Catholic Church of America (referred to as the American Metropolia) and the Patriarchal Exarchate of the Russian Orthodox Greek Catholic Church, Diocese of the Aleutian Islands and North America (referred to as the Patriarchal Exarchate).

The plaintiff church was founded in 1909, and a Pennsylvania Corporation Charter was issued to the parishioners in 1916. At that time, the Holy Synod (or Holy Council) of Russia was the supreme authority of the Russian Orthodox Greek Catholic Church. The representative of the church in the United States was Archbishop Platon whose see was St. Nicholas Cathedral, New York City.

During the rule of the Provisional Government or the "Kerensky" Government in Russia in 1917, for the six month period prior to the Bolshevik Revolution, the Holy Synod of Russia was abolished as the supreme ruling body of the Russian Orthodox Greek Catholic Church and was replaced by a single cleric, the Patriarch of the Russian

Orthodox Greek Catholic Church, also known as the Patriarch of Moscow, who continued in power after the October Revolution of 1917. The Patriarch of Moscow during this period and until 1922, when he was arrested by the Bolsheviks for resisting the confiscation of church property, by the government, was Tikhon.[1]

Following Tikhon's death in 1925, Metropolitan Sergius served as the "Locum Tenens" or suffragan Patriarch of the Russian Church. He was also imprisoned by the Soviet Government, in 1926 and 1927. His release from prison on July 29, 1927, was coupled with proclamations of support and loyalty of the church to the Soviet Government. The Soviet Government did not permit the election of a new Patriarch of the Russian Church until 1943, when Stalin restored the office. Sergius was then elected to that post and was ceremonially crowned Patriarch on January 1, 1944, in Moscow. Since 1944, the hierarchical position of Patriarch of the Russian Orthodox Greek Catholic Church has been continuously recognized and has been permitted to be filled by the Russian Government. The present Patriarch of the Russian Church is Alexis.

Due to the conflict between the Bolshevik Government and the Church in Russia, following the October Revolution of 1917, which conflict involved the direct suppression of the Russian Church and its clerics, and the confiscation of church property; on November 20, 1920, Patriarch Tikhon proclaimed that the bishops of the church in countries outside of Russia, should assume full hierarchical authority in governing their dioceses.*

In April 1924, the Fourth All-American Sobor of the North American Diocese of the Russian Orthodox Greek Catholic Church, was held in Detroit. The delegates to this convention were greatly concerned with the presence

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[1] Tikhon was released from prison in 1923; he died in May, 1925.

* Ukase (Decree) No. 362, Exhibit "DC-51".

of John Kedrovsky, the representative of the "Living Church", which at that time had the support of the Soviet Government, and with Kedrovsky's efforts to assume control of the North American Diocese. Kedrovsky had not been recognized by Patriarch Tikhon as the Patriarchal Exarch to the North American Diocese, when Tikhon was released from prison in 1923.

The delegates at the Detroit Sobor, therefore, proclaimed that the American churches would be ruled independently of the "Living Church", and on April 4, 1924, Platon, who had been the ruling Archbishop of the Russian Church to the North American Diocese from 1907 to 1914, and reappointed again to this position in 1923 by Patriarch Tikhon; was elected Archbishop of the American Diocese, or the Metropolitan of the American Diocese. Thus, an undesirable association with the Soviet supported "Living Church" and its representative, John Kedrovsky, who arrived in the United States in 1923, was avoided by the North American clergy and delegates to the Detroit Sobor of 1924.[2]

The American Metropolia, since its establishment in 1924, has been the most significant Russian Orthodox Greek Catholic hierarchy in the United States and in Canada. The vast majority of the Russian Orthodox Greek Catholic parishes in North America are loyal to the American Metropolia.

St. Michael and Archangel Russian Orthodox Greek Catholic Church, the plaintiff church in this case, first affiliated with the American Metropolia in 1935, as a result of an agreement reached with the American Metropolia

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[2] The Soviet supported "Living Church" was founded in 1922. The governmental support was withdrawn following the release of Sergius from prison and his proclaimed support of the Soviet State, in 1927.

and Bishop Adam, who was the most significant individual cleric throughout the history of the plaintiff church.

Bishop Adam was the spiritual leader of a group of Russian Orthodox Greek Catholic parishes in the United States and Canada, who referred to themselves as "Carpatho-Russians" or "Galicians". Of course, these parishes had historical and ethnic ties to the old Austro-Hungarian province of Galicia, also known as Carpatho-Russia.

Bishop Adam was the hierarchical leader of the Carpatho-Russian parishes from about 1923 to 1935, when he reached an agreement with the American Metropolia to affiliate his parishes under the Metropolia. His accord with the Metropolia ended in 1939, and in the same year Bishop Adam was disciplined by the Russian Patriarchate. The majority of Bishop Adam's former Carpatho-Russian parishes remained under the ecclesiastical jurisdiction of the American Metropolia, following Adam's severance from the Metropolia in 1939.[3]

The plaintiff church is a striking example of the ecclesiastical and hierarchical confusion created among the Russian Orthodox Greek Catholic parishes in this country, following the October Revolution of 1917.

As stated, the plaintiff church was chartered in 1916 as a parish within the Russian Orthodox Greek Catholic Church of the North American Diocese. From the time of its founding in 1909 to 1917, the supreme hierarchical authority of the church was the Holy Synod.

Although St. Michael's parish recognized the first Patriarch elected in 1917, Tikhon, the parish did not recognize the Patriarchal representatives who were sent by Tikhon to the North American Diocese, Bishops Alexander and Platon. Platon is the bishop who became the first Metro-

[3] In 1944, Adam formally became a bishop of the Patriarchal jurisdiction, and some of his former Carpatho-Russian parishes also affiliated with the Patriarchal church at this time.

politan of the American Metropolia, at the Detroit Sobor of 1924.

Beginning in 1923, St. Michael's Church became affiliated with Bishop Adam and the Carpatho-Russian Diocese.* In 1925, the parishioners adopted By-Laws which provided that the parish was to be under the ecclesiastical authority of the Russian Orthodox Bishop selected by the parishioners. Also, the 1925 By-Laws refer to St. Michael's Church as "Saint Michael Galician-Russian Greek Catholic Parish of Philadelphia, Pennsylvania". Apparently, this By-Law was adopted to prevent St. Michael's Church from being claimed as a parish under the authority of Bishop Kedrovsky, of the "Living Church", and likewise, to prevent the parish from being subjected to the claims of numerous hierarchical authorities, which were vying for power within the Russian Orthodox Greek Catholic Church, during this period.

In 1935, St. Michael's Church followed Bishop Adam's agreement of hierarchical affiliation with the American Metropolia. In 1939, when Bishop Adam withdrew from the American Metropolia, Father George Cucura, who had been the parish priest since 1936, elected to remain under the jurisdiction of the Metropolia.

Upon the crowning of Sergius as the Patriarch of Moscow in 1944, coupled with the close wartime alliance between the Soviet Union and the United States, interest in an alliance between the plaintiff church and the Patriarch of Moscow heightened. This was also the case in regard to many Russian Orthodox Greek Catholic parishes in this country. However, Father Cucura remained a priest under the American Metropolia.

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* Adam had been a priest at St. Michael's Parish in 1921.

† Patriarch Sergius died in 1945, and Patriarch Alexis was his successor.

In 1947, Patriarch Alexis sent a representative to the United States, Metropolitan Gregory, for the purpose of attempting to unite the American Metropolia with the Patriarch. The attempt failed when the American Bishops refused to accede to the Patriarch's demand that the American clerics be subject to the appointive review of the Patriarch, and to the jurisdiction of the ecclesiastical courts of the Patriarch. Following this failure to unite the American Metropolia under the Patriarch of Moscow, Patriarch Alexis decreed that Metropolia Theophilus and the bishops of the American Metropolia were subject to the ecclesiastical courts of the Patriarch, in Russia. Regardless of this decree by Alexis in November of 1947, the American Metropolia has continued to function as an autonomous hierarchy of the Russian Orthodox Greek Catholic Church.

In 1948, the Parish Council of St. Michael's Church unsuccessfully attempted to have the church supplied with a Patriarchal priest. In November, 1948, Bishop Macarius, the highest official of the Patriarchal jurisdiction in this country, advised the parish that before the Patriarchal Exarchate would consider sending a priest to St. Michael's, that Father Cucura would have to agree to leave the parish and that the Charter of St. Michael's Church would have to be formally amended to bring the parish under the jurisdiction of the Patriarchal Exarchate in America.

Having, in effect, been advised by Bishop Macarius that their Charter would have to be amended as a condition for supplying a priest to St. Michael's Church, the parish requested that the American Metropolia furnish a replacement for Father Cucura. Thus, in 1949, the Metropolia assigned Reverend Homka to St. Michael's parish and assigned Father Cucura to Reverend Homka's former church at Braddock, Pennsylvania. However, Father Cucura, who had been the priest to St. Michael's parish for

some 13 years, refused to comply with the Metropolia's order, and he, thereupon withdrew from the American Metropolia, and joined the jurisdiction of the Patriarchal Exarchate.

Regardless of his sudden change in hierarchical allegiance, Father Cucura returned to St. Michael's Church on the Sunday following this change, and conducted a service together with Reverend Kovalchuk, another priest of the Patriarchal Exarchate. Thereafter, Reverend Kovalchuk conducted the religious services at St. Michael's parish for several weeks, and on January 1, 1950, the parish voted to accept him as their priest. However, Reverend Kovalchuk was transferred to another parish at the end of January 1950. Thereafter, from January 1950 to the Fall of 1955, a group of some six priests affiliated with the Patriarchal Exarchate served St. Michael's parish.

The parishioners then set about to find a priest whom they hoped would serve the parish on a more permanent basis. In doing so, they received the permission of the Patriarchal Exarch to try to locate a suitable clergyman outside of the jurisdiction of the Patriarchal Exarchate.

Thereafter, the present parish priest, Father Alexander Fedoronko, was contacted by the Parish Council, and Metropolitan Leonty, the Metropolitan of the American Metropolia, appointed Father Fedoronko as the permanent priest of St. Michael's Church. There is no question but that the letter of appointment of Father Fedoronko gave notice to the parish that the hierarchy of the American Metropolia considered St. Michael's Church to be a parish within its hierarchy, and under the hierarchical authority of the Bishop of Washington, D. C., and of the Dean of Philadelphia.[1]

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[1] Exhibit No. PC-64.

From 1955 to the present time, St. Michael's Church has been served by Father Alexander Fedoronko, of the American Metropolia. The parish has limited its jurisdictional contacts to the hierarchy of the American Metropolia, with the exception that for a period of about 4 months in 1967, the court permitted a priest of the Patriarchal Exarchate to conduct services at the church on alternate Sunday mornings and afternoons, for that group of parishioners whose allegiance favors the Patriarchal Exarchate of the Russian Orthodox Greek Catholic Church. Following a court-supervised balloting and election on May 7, 1967, the court entered an Order discontinuing the separate services by the priest of the Patriarchal Exarchate. The balloting and election of May 7, 1967, which will be discussed at greater length, infra, established that the clear majority of the parishioners of St. Michael's Church were in favor of the continuance of their affiliation with the American Metropolia, which has been their uninterrupted affiliation since 1955, when Father Fedoronko was first assigned to the parish by Metropolitan Leonty.

Accordingly; the history of St. Michael's Church establishes that it was Chartered in 1916, as a Russian Orthodox Greek Catholic Church under the supreme authority of the Holy Synod of the Russian Orthodox Greek Catholic Church. As far as St. Michael's Church is concerned, from the time of its founding in 1909 until the advent of the Russian Revolution, in 1917, the parish was under the jurisdiction of the ruling Archbishop of the North American Diocese.

In 1917, the Holy Synod of the Russian Orthodox Greek Catholic Church was abolished and the new supreme authority of the church became vested in a single clergyman, known as the Patriarch of Moscow.

As a result of the Russian Revolution a number of conflicting hierarchies of Russian Orthodoxy emerged in countries outside of Russia, while in Russia proper, a

period of suppression of the church by the Bolshevik Government ensued, which suppression was somewhat formally alleviated by the eventual ceremonial crowning of a full Patriarch of the church in Moscow, on January 1, 1944.

Following the hierarchical change in 1917, from the Holy Synod to the Patriarch, St. Michael's parish refused to recognize the representatives of the Patriarch who were sent to this country, and they were able to obtain protection from the conflicting claims of various hierarchical groups by becoming affiliated with the so-called Carpatho-Russian Diocese, under Bishop Adam beginning in 1923. The record indicates that this affiliation was basically a peaceful one, and that Bishop Adam was an effective leader of St. Michael's parish and its affairs.

In 1935, Bishop Adam led St. Michael's parish and the other parishes of his Carpatho-Russian Diocese into a jurisdictional affiliation with the American Metropolia, which from the time of its founding at the Detroit Sobor of 1924, has been the most influential and effective branch of Russian Orthodoxy in the United States and Canada.

This affiliation continued after Bishop Adam's withdrawal from the American Metropolia in 1939, due to the fact that Father Cucura remained as the parish priest at St. Michael's Church until 1949, when he switched his personal hierarchical allegiance from the American Metropolia to the Patriarchal Exarchate.

From 1950 to 1955, the Patriarchal Exarchate furnished priests to the parish and from 1955 to the present, it has been served by Father Fedoronko of the American Metropolia.

Accordingly, during the entire history of St. Michael's parish, since the Russian Revolution, the only period in which the parish was served by priests of the Patriarchal Exarchate was from 1950 (or late 1949) to 1955. On the other hand, the parish was affiliated for 14 years, from 1935

to 1949, with the American Metropolia, and for the past 12 years, from 1955 to 1967, again, their affiliation has been with the American Metropolia.

For the period from 1923 to 1935, some 12 years, they were affiliated with Bishop Adam's Carpatho-Russian Diocese. It would be difficult to make a clear determination of their jurisdictional affiliation from 1917 to 1923, due to the fact that they refused to recognize the Patriarchal representatives who were sent to this country by the newly created Patriarch of the Russian Orthodox Greek Catholic Church.*

From the time of the founding of the parish in 1909 to 1917, the parish was clearly under the sole hierarchical jurisdiction of the church then existing in the United States, the Diocese of the Aleutian Islands and North America, of the Russian Orthodox Greek Catholic Church.

It should be noted that the Archbishop of the Diocese of the Aleutian Islands and North America from 1900 to 1907 was Tikhon who later became the Patriarch of the Russian Orthodox Greek Catholic Church, in 1917. His successor as Archbishop of the Diocese of the Aleutian Islands and North America, from 1907 to 1914, was Platon, who in 1924, became the Metropolitan of the newly formed American Metropolia of the Russian Orthodox Greek Catholic Church.

It is clearly established by this record that the practice of the Russian Orthodox Greek Catholic religion by the American Metropolia is clearly not a substantial departure from the doctrines and practices of this church, so as to effect a diversion of the property of St. Michael's parish. See, *Church of God at Markleysburg v. Church of*

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* The Patriarchy was restored in Russia in 1917, however, the Patriarch Tikhon, did not designate a representative to North America until 1923, when Platon was designated. In 1924, Platon was elected Metropolitan of the American church.

God at Markleysburg, 355 Pa. 478 (1947); *First Regular Baptist Church of Indiana, Pa. v. Allison*, 304 Pa. 1 (1931).

Turning now to the specific exceptions and requests which the court has been asked to review and to pass upon, it is determined as follows:

A. *Plaintiffs' Exceptions to the Findings of Fact Contained in the Adjudication of the Chancellor of December 16, 1966:*[1]

1. This exception is sustained, and Finding of Fact 10, of the Adjudication, is amended to read, as follows (the change thereto being italicized):

> 10. A Russian Orthodox Greek Catholic Church under the North American Diocese, as referred to in the said provision of the Charter is that body of the Russian Orthodox Church, which when the Charter was adopted, was subject to the canonical authority of the Holy Synod of Russia, *which passed out of existence in 1917.*

2. This exception to Finding of Fact 12, is dismissed.

3. This exception to Finding of Fact 16, is sustained, and that Finding of Fact is amended to read as follows:

> 16. Upon the restoration of Patriarchate in 1917, St. Michael's Church recognized the first Patriarch, Patriarch Tikhon. However, the parishioners of St. Michael's Church did not recognize Bishop Alexander or Bishop Platon who were bishops appointed by Patriarch Tikhon to rule the North American Diocese.

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[1] Each exception is passed upon and follows the number originally given to it by the plaintiffs.

4. This exception to Finding of Fact 18 is dismissed.

5. This exception to Finding of Fact 19 is sustained, and that Finding of Fact is amended to read as follows:

> 19. The name of Patriarch Tikhon was elevated during the religious services at St. Michael's Church until his death in 1925, and St. Michael's parish recognized the Russian Patriarch. The parish did not submit to the judicial and administrative jurisdiction of the Patriarchate during this period.

6. This exception to Finding of Fact 20 is sustained, and that Finding of Fact is amended to read as follows:

> 20. From 1923 until 1939, St. Michael's Church remained loyal and faithful to Bishop Adam, whom the parishioners recognized throughout this period as their ruling bishop; the church also followed the jurisdictional affiliations of Bishop Adam.

7 through 12. These exceptions to Findings of Fact 21, 22, 25, 26, 27 and 28, are dismissed.

13. This exception to Finding of Fact 37 was withdrawn.

14 through 17. These exceptions to Findings of Fact 40, 42, 43 and 44 are dismissed.

18. This exception to Finding of Fact 45 is sustained, and that Finding of Fact, as written in the Adjudication is deleted entirely, and is replaced with the following:

> 45. When Bishop Adam disaffiliated from the American Metropolia in 1939, St. Michael's Church continued to be served by Father George Cucura until 1949, who during this period from 1939 to 1949, was a priest of the hierarchy of the American Metropolia. In 1949, Father Cucura changed his hierarchical alle-

giance to the Patriarchal Exarchate, and St. Michael's Church, from 1950 to 1955, was served by a number of priests of the Patriarchal Exarchate.

19. This exception to Finding of Fact 47 is sustained and that Finding of Fact as written in the Adjudication is deleted entirely and is replaced with the following:

47. Although the parishioners of St. Michael's Church voted in favor of a resolution of recognition of the newly crowned Patriarch of Moscow in 1945, they were, until 1949, served by Father George Cucura, a priest of the American Metropolia, and the parish never adopted a formal resolution of jurisdictional affiliation with the Patriarch, nor did the parishioners amend the Charter or By-Laws of the Church so as to formalize an affiliation with the Patriarchate.

20. This exception to Finding of Fact 49 is sustained, that Finding of Fact as it appears in the Adjudication is deleted entirely and is replaced with the following:

49. From 1945 to 1949, St. Michael's Church continued to be served by Father George Cucura, who during this period was a priest of the American Metropolia; Father Cucura's service continued throughout this period despite the fact that:

(a) On December 28, 1947, the parishioners voted that they would accept Bishop Adam as their hierarchical Bishop, Bishop Adam at this time being a Bishop under the jurisdiction of the Patriarchate.

21. This exception to Finding of Fact 51 is dismissed.

22. This exception to Finding of Fact 53 is sustained, and that Finding of Fact as written in the Adjudication is deleted entirely, and is replaced with the following:

53. Following the affiliation of St. Michael's parish with Bishop Adam and the Carpatho-Russian Diocese, Bishop Adam assigned the following priests to St. Michael's parish:

Reverend Vladimir Szymanski, from 1929 to 1930, and Reverend John Rusyn, from 1930 to 1936.

Reverend Joseph Fedoronko, the father of the present parish priest, Reverend Alexander Fedoronko, was not assigned to the parish by Bishop Adam, however, he served the parish during its initial affiliation with Bishop Adam, from 1923 to 1929.

23. This exception to Finding of Fact 54 is sustained, and that finding is amended to read as follows:

54. In 1936, Bishop Adam appointed Father George Cucura to St. Michael's Church as the parish priest. Reverend Cucura, at the time of his appointment was under the jurisdiction of Bishop Adam, as a Diocesan Bishop of the Metropolia since March, 1935.

24 & 25. These exceptions to Findings of Fact 59 and 60 are dismissed.

26. This exception to Finding of Fact 62 was withdrawn.

27. This exception to Finding of Fact 67 is sustained, and that Finding of Fact as written in the Adjudication is deleted entirely, and is replaced with the following:

67. Father Cucura, Father Kovalchuk and Bishop Adam did not permit Reverend Homka, the priest who had been assigned to St. Michael's Church by the Metropolia in 1949 to replace Father Cucura, to officiate at the religious services at the parish on the Sundays following Reverend Kovalchuk's appointment as the parish priest by the Patriarchal Exarchate.

28 & 29. These exceptions to Finding of Fact 68 and 78 are dismissed.

30. This exception to Finding of Fact 79 is sustained, and that Finding of Fact as written in the Adjudication is deleted entirely, and is replaced with the following:

> 79. The Patriarchal Exarchate granted St. Michael's Church the right to obtain a priest who was not a priest of the Patriarchal Jurisdiction; also the authorities of the Exarchate recommended Reverend Alexander Fedoronko, a Metropolitan priest, to the parish.

31. This exception to Finding of Fact 82 is sustained, and that Finding of Fact as written in the Adjudication is deleted entirely, and is replaced with the following:

> 82. Although the above letter indicates that St. Michael's Church was accepted into the jurisdiction of the American Metropolia, the record in this case does not establish that the parishioners of St. Michael's Church formally resolved to join the Metropolia either before or after receipt of the above letter. Father Fedoronko commenced serving as the parish priest to St. Michael's Church in November, 1955; from that date to the present, contacts which St. Michael's Church has had with the Exarchate of the Patriarchal Church in America have been insignificant.

32. This exception to Finding of Fact 84 was withdrawn.

33 through 39. These exceptions to Findings of Fact 85, 89, 90, 92, 93, 94 and 95, are dismissed.

40. This exception to Finding of Fact 96 is sustained, and that Finding of Fact as written in the Adjudication is deleted entirely, and is replaced with the following:

96. Following first year of this litigation, during which year the defendants took the position that they were an independent or autonomous Russian Orthodox Greek Catholic Church, and beginning in 1964 to the present, the two contending groups of parishioners of St. Michael's Church have been steadfast in their respective positions.

B. *Plaintiffs' Exceptions to the Conclusions of Law of the Chancellor's Adjudication of December 16, 1966.**

1. This exception to Conclusion of Law 4 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely (with the exception of the footnote thereto) and is replaced with the following:

"4. In 1917, the Holy Synod of the Russian Orthodox Greek Catholic Church was abolished and the supreme authority of the Russian Orthodox Greek Catholic Church in Russia became vested in the Patriarchate, which was re-established* in 1917, to replace the Holy Synod. However, the Bolshevik Government refused to recognize the authority of the Patriarchate and it supported a separate church organization known as the "Living Church" of the Russian Orthodox Greek Catholic Church until 1927. At the May, 1923, Sobor of the "Living Church", the delegates even voted to depose and defrock Patriarch Tikhon, and after Tikhon's release from prison in 1923 and until his death

* The numbering of the paragraphs following this headnote, correspond with the original numbers assigned to the exceptions by the plaintiffs.

* The word "re-established" is used due to the fact that the Patriarchate existed as the supreme authority of the Russian Orthodox Greek Catholic Church prior to 1721, when the Holy Synod was created by Peter the Great.

in 1925, he was unable to accomplish any reorganization of the church, under the authority of the Patriarchate. The Patriarchate, being unable to exercise its religious authority in Russia, was likewise unable to function effectively outside of Russia, and thus, numerous separate hierarchical organizations were formed, including the American Metropolia in 1924, to carry on the duties and functions of a religious hierarchy under the centuries-old tradition of the Russian Orthodox Greek Catholic Church.

2. This exception to Conclusion of Law 7 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced by the following:

7. From 1923 to 1935, the parishioners of St. Michael's Church recognized Bishop Adam as their Bishop and their jurisdictional affiliation was with Bishop Adam's Carpatho-Russian Diocese. Following the 1935 agreement of affiliation between Bishop Adam and the American Metropolia, St. Michael's Church became affiliated with the American Metropolia and it continued to be served by a priest of the American Metropolia, Father George Cucura, until 1949, when Father Cucura withdrew from the American Metropolia and became a priest of the Exarchate of the Patriarchal Church. From 1950 to 1955, St. Michael's Church was affiliated with the Exarchate of the Patriarchal Church and was served by priests of that hierarchy of the Russian Orthodox Greek Catholic Church. From 1955 to the present time, St. Michael's Church has been affiliated with and served by a priest of the American Metropolia.

3. This exception to Conclusion of Law 8 of the Adjudication is dismissed.

4. This exception to Conclusion of Law 9 of the Adjudication is dismissed.

5. This exception to Conclusion of Law 10 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced with the following:

> 10. In 1955, the parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church, having first obtained the consent of the Patriarchal Exarchate, obtained the appointment of Father Alexander Fedoronko as the parish priest, and he has continued to serve in that position to the present time; Father Fedoronko is a priest under the American Metropolia.

6. This exception to Conclusion of Law 11 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced with the following:

> 11. From 1955, to the present time, St. Michael's Church has been served solely by a priest of the American Metropolia; prior to the assignment or appointment of Father Alexander Fedoronko to St. Michael's Church by Metropolitan Leonty on November 20, 1955, the parishioners had voted to accept Father Fedoronko as their parish priest and had voted to authorize the Parish Council to request his assignment to their church by Metropolitan Leonty; from 1955 to the present time, St. Michael's Church has had numerous contacts and dealings with the hierarchical organization and with the hierarchical officials of the American Metropolia; at a court supervised balloting of the parishioners of St. Michael's Church, conducted on May 7, 1967, the substantial majority of the parishioners voted in favor of the resolutions which were unanimously adopted by the Parish Council, that the Charter and

Articles of Incorporation and By-Laws of St. Michael's Church be amended to clearly establish the formal affiliation of the church with the hierarchy of the American Metropolia, formally known as the Russian Orthodox Greek Catholic Church of America.

7. This exception to Conclusion of Law 12 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced with the following:

12. That the affiliation of St. Michael's Church with the American Metropolia, from 1955 to the present time has not been in violation of the Lay Control of Church Property Act, and has been a lawful and proper affiliation under the Charter and By-Laws of St. Michael's Church, due to the fact that this affiliation was not and is not a substantial departure from the doctrines and practices of the Russian Orthodox Greek Catholic Church, but, on the contrary, has been and is an affiliation dedicated to the practice and growth of the Russian Orthodox Greek Catholic faith, as envisioned by the founding fathers of this parish in their Charter and By-Laws. That this affiliation was lawfully and properly formalized by the court-supervised balloting of May 7, 1967, when the substantial majority of the parishioners of St. Michael's Church voted to amend their Charter and Articles of Incorporation, and By-Laws, to firmly establish their hierarchical allegiance to the American Metropolia, formally known as the Russian Orthodox Greek Catholic Church of America.

8. This exception to Conclusion of Law 13 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced by the following:

13. The letter written by Metropolitan Leonty to the President of the Parish Council of St. Michael and

Archangel Russian Orthodox Greek Catholic Church, dated October 31, 1955, and contained in the record of this case as Exhibit "PC-64", in which the Metropolitan advised the President of the Parish Council that St. Michael and Archangel Russian Orthodox Greek Catholic Church had been accepted into the jurisdiction of the American Metropolia by resolution of the Metropolitan, and that Reverend Alexander Fedoronko had been appointed as Pastor of the Church, did cause St. Michael's Church to become affiliated with the American Metropolia; similarly, on May 7, 1967, the substantial majority of the parishioners of St. Michael's Church voted in favor of resolutions to amend the Charter and Articles of Incorporation, and to amend the By-Laws of their church, so as to firmly establish their formal affiliation with the hierarchy of the American Metropolia, formally known as the Russian Orthodox Greek Catholic Church of America.

9. This exception to Conclusion of Law 14 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced with the following:

14. The decrees of the American Metropolia and of its agencies and officials which have purported to discipline, expel, excommunicate or restrict in any way or by any means the individual members and individual parishioners of St. Michael and Archangel Russian Orthodox Greek Catholic Church or their families, from participating in the affairs, functions, meetings, offices, rights and religious services of the parish were issued prior to the vote of formal affiliation of St. Michael and Archangel Russian Orthodox Greek Catholic Church with the American Metropolia, and during the course of this litigation; on May 7, 1967, long after the issuance of the said disciplinary decrees of the American Metropolia, the parishioners of the

church voted to amend their Charter and Articles of Incorporation and By-Laws to formalize their affiliation with the American Metropolia. The said disciplinary decrees are, accordingly declared to be null and void.

10. This exception to Conclusion of Law 15 is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced by the following:

15. The court supervised an election and balloting of the parishioners of St. Michael's Church on May 7, 1967, at which the substantial majority of parishioners of St. Michael's Church voted in favor of the resolutions, which were duly adopted by the Parish Council on April 19, 1967, to amend the Charter and Articles of Incorporation, and to amend the By-Laws of the church, so as to effect a formal affiliation of St. Michael's Church with the American Metropolia, formally known as the Russian Orthodox Greek Catholic Church of America; the said election and balloting of May 7, 1967, was a lawful and valid proceeding which did effect the formal affiliation of St. Michael's Church with the American Metropolia, formally known as the Russian Orthodox Greek Catholic Church of America.

11. This exception to Conclusion of Law 16 of the Adjudication is dismissed.

12. This exception to Conclusion of Law 17 of the Adjudication is sustained, and that Conclusion of Law as written in the Adjudication is deleted entirely, and is replaced with the following:

17. That a valid and fully enforcible jurisdictional affiliation of St. Michael's Church was effected by the

court-supervised balloting of May 7, 1967, at which time a substantial majority of the properly qualified members of St. Michael's Church voted in favor of resolutions to amend the Charter and Articles of Incorporation of the church, and to amend the By-Laws of the church, so as to definitively and clearly establish that St. Michael's Church is under the hierarchical jurisdiction of the Russian Orthodox Greek Catholic Church of America; also known as the American Metropolia. This balloting to amend the said Charter and Articles of Incorporation and to amend the By-Laws of St. Michael's Church, is a lawful mandate of the parishioners of the church which does not cause any substantial change in the religious doctrines and practices to which the parish is dedicated, that being, the promulgation and practice of the Russian Orthodox Greek Catholic religion.

C. *Plaintiffs' Exceptions to the Failure of the Chancellor to Affirm Its Requests for Certain Conclusions of Law:**

13. This exception is sustained, and the court therefore adds Conclusion of Law 18 to the Adjudication, as follows:

18. The burden of proof to establish the contention that St. Michael's parish was under and subject to the hierarchy of the Patriarchal Exarchate of the Russian Orthodox Greek Catholic Church was the burden of the proponents of that contention, the defendants and counter-claimants in this action.

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* The paragraph numbers correspond with the original numbers used by the plaintiffs in their exceptions.

14. This exception is sustained, and the court therefore adds Conclusion of Law 19 to the Adjudication, as follows:

19. The Rector of St. Michael's Church, the Very Rev. Alexander Fedoronko, serves the parish consistent with the purposes of the Charter and the By-Laws and according to the Doctrine and Ritual of the Russian Orthodox Greek Catholic Church.

15. This exception is sustained, and the court therefore adds Conclusion of Law 20 to the Adjudication, as follows:

20. St. Michael's parish is a Russian Orthodox Greek Catholic parish and as such, it must and does exist within a Russian Orthodox Greek Catholic diocese with a clerical hierarchy; the church hierarchy with which it has been affiliated uninterruptedly for the past twelve years, since 1955, is the hierarchy of the Russian Orthodox Greek Catholic Church of America, also known as the American Metropolia; on May 7, 1967, the substantial majority of the parishioners of St. Michael's Church voted in favor of formalizing this affiliation by amending the Charter and Articles of Incorporation, and the By-Laws of the church so as to designate its jurisdictional affiliation with the Russian Orthodox Greek Catholic Church of America.

16. This exception is sustained, and the court therefore adds Conclusion of Law 21 to the Adjudication, as follows:

21. The defendants and counter-claimants in this case have not carried the burden of proving that St. Michael's Church is now and always has been under the jurisdiction of the Patriarchate of the Russian Orthodox Greek Catholic Church, or that the church is now and always has been under the jurisdiction of the Patriarchal Exarchate of the Russian Orthodox Greek Catholic Church, or that the church is now and

always has been under the jurisdiction of the Archdiocese of the Aleutian Islands and North America of the Russian Orthodox Greek Catholic Church.

17 through 21. These exceptions pertaining to plaintiffs' requests for Conclusions of Law 5, 6, 8, 10, and 11 are dismissed, because they deal with factual matters previously discussed, or are not necessary in making a final determination in this case, because the court, in its careful review of the entire record, has concluded that the jurisdictional affiliation of St. Michael's Church with the Russian Orthodox Greek Catholic Church of America (the American Metropolia) is not a substantial change in the practices and doctrine of the Russian Orthodox Greek Catholic religion as envisioned by the founding fathers of this church, but on the contrary, the said affiliation is clearly in accordance with the purpose upon which this church was founded, namely, "the support of public worship of Almighty God according to the Doctrine and Ritual of the Russian Orthodox Greek Catholic Church." The record unquestionably establishes that the disputed affiliation of St. Michael's Church with the American Metropolia in no way contravenes the centuries-old practice of the doctrine and ritual of the Russian Orthodox Greek Catholic Church, as those doctrines and rituals are practiced and promulgated by the American Metropolia in this country.

22. This exception is sustained, and plaintiffs' request for Conclusion of Law 12 is therefore added to the Adjudication as Conclusion of Law 22, as follows:

> 22. The Orthodox Church, is not monolithic, and does not have a single head, but has a number of Ruling Primates in various parts of the world; it exists as a full Church in a number of geographical territories, as Patriarchates, Metropolias, or even limitedly

as in Cyprus—yet independent, wherever it can continue itself, preserve the true faith, maintain seminaries or educational institutions with additional clergy, and where it has enough hierarchs to perpetuate itself into the future, and other similar conditions most of which were described by the Patriarch of Moscow (Exhibit DC-47) in 1948 at the 500th Year Anniversary of the Independence of the Church in Russia, which had first (in the 10th Century) been a missionary territory of the ancient Patriarchate of Constantinople.

23. This exception regarding plaintiffs' request for Conclusion of Law 15 is dismissed.

24. This exception regarding plaintiffs' request for Conclusion of Law 16 is sustained, and therefore the court adds as Conclusion of Law 23, the following:

23. In coming under the care and concern, as it wished, of the hierarchs in whose care and concern St. Michael's parish is and was, St. Michael's parish legally lived and lives under its corporate Charter and By-Laws.

25 through 33. These exceptions regarding plaintiffs' requests for Conclusions of Law 17 through 22, 24 through 27, 29, 30 and 35 through 39, are denied for reasons which need not be detailed here and which, in part, are stated, supra, in regard to plaintiffs' exceptions 17 through 21, under this subheading.

D. *Plaintiffs' exceptions regarding the failure of the Chancellor to make certain Findings of Fact.**

* Paragraph numbers follow those numbers originally assigned to plaintiffs' exceptions.

40. This exception regarding plaintiffs' request for Finding of Fact 2 is dismissed.

41. This exception regarding plaintiffs' request for Finding of Fact 3 is sustained, and the court therefore adds the following, as Finding of Fact 98 to the Adjudication:

> 98. The corporate plaintiff is not an autonomous, independent, self-governing Church, but is only a connected *parish*, recognizing the Hierarchical principle which is a fundamental doctrine and teaching of the Russian Orthodox Greek Catholic Church; this principle provides for a hierarchy, i.e., Bishops in the Church in whose constant care and within whose concern the faithful are, and which said Bishop is represented on the local level by the priest of the parish, whose representative he is.

43 through 60. These exceptions regarding the failure of the Chancellor to approve plaintiffs' requested Findings of Fact 5, 6, 9 through 12, 14, 16 through 20, 22, 25, 28, 30, 31, and 33 are dismissed, for reasons that need not be detailed here, except that the Findings of Fact requested have, to a great extent, been previously covered or delve into greater detail than is required of this opinion.

61. This exception regarding plaintiffs' request for Finding of Fact 36 is sustained, and the court therefore adds the following to the Adjudication, as Finding of Fact 99.

> 99. Section VII of the Charter of St. Michael's Church provides that "no person shall be Rector of this Church unless he shall have had a Russian Orthodox Greek Catholic Ordination, and unless he be in full and good standing with the Russian Orthodox Greek Catholic Church in the Diocese of North America"; the present Rector, V. Rev. Alexander Fedoronko, meets

the Charter qualifications; he was chosen as the candidate for Rectorship in 1955, because of his qualifications by a duly elected parish committee; the committee was acting under the authority of the parish, and the approval of the Exarchate at a time when one of the Exarchate's priest was serving St. Michael's parish; his candidacy was approved in advance of any appointment from the Metropolia by the Exarchical Council of the Patriarchate of Moscow, and/or by Archbishop Boris, Exarch of the Patriarchate of Moscow for America, to whom his name was submitted; that the Parish Committee requested the appointment be made at a personal meeting with Metropolitan Leonty; that Father Fedoronko was duly appointed on November 21, 1955 as the permanent pastor (Rector) of St. Michael's by His Eminence, Metropolitan Leonty, then Ruling Hierarch, as Metropolitan, of the Russian Orthodox Greek Catholic Church of America; that Father Fedoronko entered upon his duties as Rector-pastor of St. Michael's in November, 1955 under the traditions, discipline and rules of the Russian Orthodox Greek Catholic Church which said discipline is binding upon him and upon St. Michael's Parish and its members; and that said appointment was binding and proper.

62 through 73. These exceptions regarding the failure of the Chancellor to approve plaintiffs' requested Findings of Fact 37 through 41, 43, 46 through 48, 50, 51 and 53, are dismissed for reasons that need not be detailed here, except that the Findings of Fact requested have, to a great extent, been previously covered or delve into greater detail than is required of this opinion.

74. This exception regarding plaintiffs' requested Finding of Fact 54 is sustained, and the court therefore adds the following to the Adjudication as Finding of Fact 100:

> 100. In 1924, in accordance with Ukase (Decree) No. 362 of 1920, issued by Patriarch Tikhon, and in accordance with Patriarch Tikhon's appointment of Platon in 1923 as his representative to North America, the continuity of the Russian Orthodox Greek Catholic Church of North America was accomplished by the organization of the church in North America at the Detroit Sobor of 1924 under Platon, who was elected Metropolitan; at this time, the condition of the church in Russia was totally unsettled and the Russian hierarchy was unable to administer to the affairs of the church in North America.

75. This exception regarding plaintiffs' request for Finding of Fact 55 is sustained; and the court therefore adds the following to the Adjudication, as Finding of Fact 101:

> 101. From 1924 to 1934, no representative of the hierarchy of the church in Russia was sent to this country; the continuity of the church in North America was solely maintained by the clergy and hierarchy who had been a part of the church prior to the events of the Russian Revolution and who remained in America after the assumption of political power in Russia by the Bolshevik Government.

76 through 97. These exceptions regarding the plaintiffs' requested Findings of Fact 56 through 58, 61 through 63, 65, 67, 70, 71, 74, 76 through 86, are dismissed for reasons that need not be stated in detail here. Many of the suggested Findings of Fact have been covered in this opinion or involve factual detail which is not required of this opinion.

E. *Defendants' Exceptions to the Adjudication of the Chancellor, Dated December 16, 1966.**

1. Defendants' exception to Finding of Fact 19 of the Adjudication is dismissed for the reason that St. Michael's Church did not recognize Bishop Alexander or Bishop Platon, the representatives of Patriarch Tikhon to the North American Diocese, following the establishment of the Patriarchy in 1917.

2. Defendants' exception to Finding of Fact 20 of the Adjudication is sustained, and that Finding of Fact is deleted entirely from the Adjudication and is replaced with the following:

> 20. From 1923 to 1939, St. Michael's Church was affiliated with Bishop Adam in the Carpatho-Russian Diocese, which Bishop Adam ruled independently from 1923 to 1935; in 1935 Bishop Adam's parishes, including St. Michael's parish, became affiliated with the American Metropolia. Bishop Adam withdrew from the American Metropolia in 1939, and in 1944 he became a Bishop under the jurisdiction of the Patriarchal Exarchate.

3. Defendants' exception to Finding of Fact 22 of the Adjudication is dismissed.

4. Defendants' exception to Finding of Fact 27 of the Adjudication is dismissed for the reason that the Patriarchate did not exist in 1916 as the supreme authority of the Russian Orthodox Greek Catholic Church.

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* The numbering of the following paragraphs under this subheading correspond with the numbers originally assigned to defendants' exceptions.

5. Defendants' exception to Finding of Fact 30 of the Adjudication is dismissed.

6. Defendants' exception to Finding of Fact 38 of the Adjudication is dismissed.

7. Defendants' exception to Finding of Fact 40 of the Adjudication is dismissed for various reasons, among them being that the bishop of the Carpatho-Russian Diocese, Bishop Adam, was not a Patriarchal Bishop until he was consecrated as such, in 1944.

8. Defendants' exception to Finding of Fact 45 of the Adjudication is sustained, and that Finding of Fact is deleted entirely from the Adjudication, and is replaced with the following:

> 45. When Bishop Adam disaffiliated from the American Metropolia in 1939, St. Michael's Church continued to be served by a priest of the American Metropolia, Father George Cucura, until 1949. Accordingly the jurisdictional affiliation of the parish during this ten year period, from 1939 to 1949, was with the American Metropolia, even though, during this same period various votes of the parishioners were recorded as favoring the recognition of the Patriarch of the church in Russia, or as favoring the Patriarch of Moscow, who had been ceremonially crowned as Patriarch on January 1, 1944. However, the record establishes that St. Michael's parish did not affiliate with Patriarchal Exarchate until 1950. This affiliation continued until until 1955, when the parish again came under the jurisdiction of the American Metropolia.

9. Defendants' exception to Finding of Fact 47 of the Adjudication is sustained, and that Finding of Fact is de-

leted entirely from the Adjudication, and is replaced with the following:

47. In 1945, the parishioners of St. Michael's Church voted in favor of a resolution of recognition of the Patriarch of Moscow; and resolved that the parish should only be under the jurisdiction of the Bishop whom the Patriarch of Moscow appoints as their Bishop. Regardless of this decision of the parishioners, the record establishes that the parish continued to be served by Father George Cucura, a priest in the jurisdiction of the American Metropolia, until 1949.

10. Defendants' exception to Finding of Fact 59 of the Adjudication is dismissed.

11. Defendants' additional exceptions to Findings of Fact 44, 60, 61 and 83 of the Adjudication are dismissed.

12. Defendants' exceptions to Conclusions of Law 6, 7, 8, 11 and 17 of the Adjudication are dismissed.

13. Defendants' exceptions to the Chancellor's refusal to affirm their requested Findings of Fact 56, 57, 58, 85 and 89 are dismissed for various reasons, among which are, that the facts requested have been previously covered by the court, and that the requested findings delve into more detail than is necessary in this opinion.

14. Defendants' exceptions to the court's refusal to affirm their requested Conclusions of Law 3 and 16 are dismissed.

15. Defendants' exceptions to the court's admission into evidence of certain documents and exhibits pertaining to this case are dismissed.

F. *Defendants' Exceptions to the Report of the Court Representation Regarding the Court Supervised Election and Balloting of May 7, 1967.*

On May 7, 1967, the court conducted an election of officers and a balloting upon resolutions to amend the Charter and Articles of Incorporation, and to amend the By-Laws of St. Michael's Church. The order which directed that the election and balloting be conducted was entered by the Chancellor on April 14, 1967, following a court hearing upon a petition that an election and balloting be held. The hearing was conducted on April 11, 1967.

The meeting of May 7, 1967, was the first general meeting of the parishioners since January 26, 1964, on which date the court also supervised an election for St. Michael's parish. Traditionally, there has been an annual meeting of the parishioners to elect church officers, and to vote upon resolutions pertaining to church business and the life of the parish.

The matters to be voted upon at the meeting of May 7, 1967, were contained in the Order of the Chancellor of April 14, 1967, and were in accordance with the Adjudication of the Chancellor of December 16, 1966. The May 7, 1967 meeting, which normally would have been held on the last Sunday of January 1967, was postponed by the court at that time, until after legal argument was heard by the Court en Banc upon the exceptions filed to the Chancellor's Adjudication.

The representative of the court who conducted the meeting of May 7, 1967, filed a detailed written report of the meeting which establishes the following facts regarding the balloting conducted on that date:

1. A slate of church officers were elected by a vote of 267 electors in favor of the individuals placed in

nomination; 103 electors cast "protest" votes against the election of the persons nominated.

2. A vote of 253 electors was recorded in favor of a resolution to adopt the proposed amendments of the Parish Council to amend the Charter and Articles of Incorporation of the church in order to designate the parish as being subject to the hierarchical jurisdiction of the Russian Orthodox Greek Catholic Church of America (the American Metropolia). The votes of 194 electors were cast against the proposed amendments to the Charter and Articles of Incorporation.

3. The votes of 253 electors were recorded in favor of the resolution of the Parish Council to amend the By-Laws of the church in order to designate the parish as being subject to the hierarchical jurisdiction of the Russian Orthodox Greek Catholic Church of America (the American Metropolia). A vote of 198 was recorded against the approval of the resolution to amend the By-Laws.

4. Of the 253 electors who voted in favor of the proposed amendments to the Charter and Articles of Incorporation, and to the By-Laws, five were ineligible to vote upon the amendment questions in accordance with the Chancellor's Order of April 14, 1967. Of the 194-198 electors who cast votes against the proposed amendments, twenty-two electors were ineligible to vote thereon, in accordance with the Chancellor's Order of April 14, 1967.

Accordingly, although the outcome of the balloting was not affected by the casting of th se votes, the resolutions in favor of the amendments were adopted by a greater margin of votes (17 votes) than the total counting of the ballots indicates.

Both the election of officers of the parish and the balloting upon the resolutions to amend the basic documents of the parish, were cast by written ballot and placed in ballot boxes which were under the control and supervision of a court officer, who assisted in the conduct of the election.

Defendants have filed forty-four exceptions to the Report of the Court Representative pertaining to the meeting of May 7, 1967, upon which the court makes the following rulings:

1. This exception questions the authority of the court to conduct the election and balloting of May 7, 1967.

The history of this church establishes that the supreme authority under which it was founded and chartered, the Holy Synod of the Russian Orthodox Greek Catholic Church, was abolished in 1917, and replaced by the office of the Patriarch of Moscow.

The first Patriarch, Tikhon, in 1920, issued a decree granting the right to the dioceses outside of Russia to establish autonomous hierarchies to govern the churches within their dioceses, due to difficult circumstances involving the church in Russia, as a result of the Bolshevik Revolution and the establishment of the Soviet Government, whose proclaimed policy was the suppression of religious institutions and the establishment of an atheistic society.

In 1923,* after Tikhon's release from prison, Tikhon appointed Bishop Platon as the Archbishop of the North American Diocese, under which St. Michael's Church was chartered. Platon had been Archbishop of the North American Diocese from 1907 to 1914. He returned to the United States in 1921, but refused to assume the position of Archbishop until 1923, when he was re-appointed Archbishop by Tikhon.

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*An oral appointment of Platon as Archbishop of the North American Diocese was made by Tikhon, in 1922.

It should be noted that during Tikhon's imprisonment in Soviet Russia, in 1922 and 1923, the Soviet Government recognized and supported a group of clerics who proclaimed themselves to be the "Living Church" of the Russian Orthodox Greek Catholic Church, and who sent a representative to the United States to act as the Archbishop of the North American Diocese, John Kedrovsky, who occupied St. Nicholas Cathedral in New York City, until his death in 1934, after which his son assumed his authority, and continued to occupy the cathedral until 1945. In 1945, Bishop Benjamin, a representative of the Patriarch of Moscow, commenced occupying the cathedral and since then, the cathedral has been continuously occupied by the representatives of the Patriarch of Moscow, or the Patriarchal Exarchate of the Diocese of the Aleutian Islands and North America.

In the law-suits involving the right to occupy St. Nicholas Cathedral, the traditional see of the Russian Orthodox Greek Catholic Church in North America, John Kedrovsky, the Archbishop appointed by the "Living Church" Sobor, held in Russia in 1923, was determined to be the rightful occupant of the cathedral, rather than Bishop Platon, the appointee of Patriarch Tikhon. The opinion notes that the office of the Patriarch (Tikhon) had been abolished by the 1923 "Living Church" Sobor in Russia, prior to the date of the document, September 29, 1923, by which Tikhon purportedly appointed Platon as Archbishop of the North American Diocese: *Kedrovsky v. Rojdesvensky*, 242 N. Y. 547 (1926), which affirmed the opinion of the Appellate Division of the New York Supreme Court, 214 App. Div. 483.

In *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952), the U. S. Supreme Court held provisions of the Religious Corporations Law of New York to be unconstitutional under the First Amendment, in so far as the state statute

attempted to place the ownership of religious property (St. Nicholas Cathedral) under the American Metropolia.

Likewise, in *Kreshik v. St. Nicholas Cathedral*, 367 U. S. 190 (1960), the U. S. Supreme Court struck down an attempt by the New York Courts to decree that under the common law of New York, the rights of ownership of St. Nicholas Cathedral were the property of the American Metropolia due to the governmental control of the church in the Soviet Union, and its control over appointed representatives of the church to this country. The New York Court of Appeals had decreed that the equitable doctrine of cy pres resulted in the right of the American Metropolia to occupy and possess St. Nicholas Cathedral. The U. S. Supreme Court held that the action by the New York court was violative of the First Amendment to the Constitution of the United States as it constituted a prohibited exercise of power by the judiciary.

As distinguished from the decisions in *Kedroff* and *Kreshik*, the court supervised election and balloting at St. Michael's Church on May 7, 1967, was not pursuant to any legislative enactment nor "self-declared" order of the court.

The order of April 14, 1967, that an election and balloting be conducted, resulted from a petition by the plaintiffs that the court supervise an election and balloting at the church premises. At the legal argument upon this petition, the defendants opposed the request of the plaintiffs and after the order was entered that the election and balloting be held, primarily because the parish had not had an opportunity to elect officers and vote upon matters pertaining to the parish since 1964, the defendants appealed the order of April 14, 1967 to the Supreme Court of Pennsylvania.

On May 4, 1967, the Pennsylvania Supreme Court entered an order dismissing the defendants' petition for the allowance of a special supersedeas, and the meeting of May 7, 1967, then followed.

Thus, the election and balloting, its effect upon St. Michael's Parish regarding its jurisdictional affiliation with the American Metropolia, which affiliation commenced in 1955, clearly is not such state action (by the legislative or by the judiciary) as is prohibited by the decisions in *Kedroff* and *Kreshik*, supra.

The court has, in no way, attempted to impose its opinion regarding the religious hierarchical control of this parish upon its parishioners. It has merely attempted to arbitrate and to decide the issue of the hierarchical affiliation of this parish, in accordance with existing legal precedents and in accordance with the rights of the parishioners.*

The record in this case clearly establishes that the practical effect of the 1924 All-American Sobor at Detroit, was to establish an independent and autonomous American hierarchy of the Russian Orthodox Greek Catholic Church, whose bishops, clerics and parishes, had previously been under the hierarchical authority of the North American Diocese of the Russian Orthodox Greek Catholic Church. Thus the power, authority and functions of the formerly composed North American Diocese, were totally assumed and controlled by the American and Canadian clerics and delegates, who met at Detroit in 1924, to vote the establishment of the American Metropolia. The delegates' principal concerns were the future of the North American Diocese and the presence of a "political" bishop in this country, John Kedrovsky, who claimed to be the ruling bishop of the diocese, by virtue of his appointment by the "Living Church" Sobor, held in Russia, in 1923.

Acting under the authority of the decree (Ukase) of 1920, of Patriarch Tikhon, the delegates voted independence

* See, Burdikoff v. Russian Orthodox Greek Catholic Church, St. Peter & Paul's Church of Loraine, Ohio, 117 Ohio App. Ct. 1 (1962), 174 Ohio State 140, cert. den. U. S. S. Ct., June 1963.

from the church authorities in the Soviet Union and their representatives to North America, and elected Platon as the first Metropolitan of this autonomous church hierarchy. The American Metropolia has functioned as an autonomous church hierarchy, dedicated to the practices, rituals and canons of the Russian Orthodox Greek Catholic Church, from 1924 to the present time. It recognizes a spiritual relationship with the Patriarch of Moscow, but acts independently of the Patriarchate and the Patriarchal representatives in this country.

Thus, factually, this record establishes that the formerly constituted North American Diocese, as it existed prior to 1917, is now, by and large, composed of parishes which are affiliated under the jurisdiction of the American Metropolia, established in 1924.

The record establishes that the authority to organize an autonomous church in North America (Ukase 362 of 1920, issued by Patriarch Tikhon) was issued by necessity, when the church in Russia was being suppressed by the Soviet Government, and that it was an appropriate direction under which the American clerics chose to act in 1924, at the Detroit Sobor.

Moreover, the record establishes that the former North American Diocese became virtually extinct following the Russian Revolution and continuing to 1945, when Bishop Benjamin was permitted to occupy St. Nicholas Cathedral. Bishop Benjamin had been in this country since 1933 as Patriarchal Exarch (representative of the Patriarch of Moscow) but did not attempt to depose John Kedrovsky (of the "Living Church") nor his sons (the Kedroffs) from St. Nicholas Cathedral.

Bishop Benjamin's position and influence in the United States increased with the formation of the Soviet-American Alliance during World War II, and in 1943 the Diocese of the Aleutian Islands and North America of the Russian

Orthodox Greek Catholic Church, was incorporated in New York. This diocese, as it is presently composed, bears little resemblance to the North American Diocese as it existed when St. Michael's Church was founded and chartered, prior to the Russian Revolution of 1917.

Thus, due to the great changes not only in the hierarchy of the church in Russia since 1917, when the Holy Synod was abolished and the Patriarch of Moscow was re-established, but also due to the complete change in the composure of the Diocese of North America, under which St. Michael's Church was chartered, this court clearly deems it lawful and, in fact, mandatory; in the application of the legal principles involved in this case, that the parishioners were granted leave to vote upon appropriate amendments to their Charter and Articles of Incorporation (and By-Laws), in order to determine and settle the problem which has plagued this parish regarding their jurisdictional affiliation with the Russian Orthodox Greek Catholic Church of America over the past twelve years.

In this regard, it must be emphasized that prior to the assignment of Father Alexander Fedoronko to St. Michael's Parish in 1955, that the Patriarchal Exarchate, which had attempted to supply the parish with suitable clerics from 1950 to 1955, granted its permission to the parish, that the parish request the American Metropolia to assign Father Alexander Fedoronko to St. Michael's Church as its Rector. This, of course, was accomplished, after the release of the parish by the Patriarchal Exarchate. Notice of the effect of this action, the assignment of Father Fedoronko to the parish, was clearly defined by Metropolitan Leonty in his letter of October 31, 1955, to William Yurkow, the president of the parish council, in which he stated that the parish had been accepted into the jurisdiction of the American Metropolia.

The granting of the right to St. Michael's Parish to obtain the assignment of Father Fedoronko to the parish, as its

priest, was a decision of the highest judicial authority of the Patriarchal Exarchate of the Russian Orthodox Greek Catholic Church and is, therefore, a decision which should not be subject to the review of this court. *Watson v. Jones*, 13 Wallace (U. S. S. Ct.) 679, 727 (1871), in which the court stated:

> "In this class of cases we think the rules of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

Accordingly, this court is bound to follow the decision of the Patriarchal Exarchate of 1955, which granted St. Michael's Parish the right, in so far as the Patriarchal Exarchate was concerned, of obtaining a permanent priest from the American Metropolia, and thereby under the laws and canons of the Russian Orthodox Greek Catholic Church, becoming affiliated jurisdictionally with the Russian Orthodox Greek Catholic Church of America.

The court's supervision of the balloting of May 7, 1967, at which resolutions to amend the Charter and Articles of Incorporation (and By-Laws) of the parish were adopted by the parishioners, is clearly consistent with the action taken by the Patriarchal Exarchate in 1955, when it permitted St. Michael's Church to become jurisdictionally

affiliated with the American Metropolia.* Likewise, the court's supervision of the balloting of May 7, 1967, is consistent with the decision of the American Metropolia of 1955, to accept St. Michael's Church into the jurisdiction of the American Metropolia.

As stated by the Supreme Court of the United States in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952), at page 116:

> "Freedom to select clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference."

Since the supervision of the balloting of May 7, 1967, was clearly consistent with the 1955 decision of the Patriarchal Exarchate and the 1955 decision of the American Metropolia, in regard to the jurisdictional affiliation of St. Michael's Parish with the American Metropolia, it cannot be seen to have violated the well-established principle of law which precludes our civil courts from reviewing decisions made by properly constituted ecclesiastical authorities. *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 120-121 (1952), in which the court stated:

> "There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion."

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* This is likewise consistent with the 1943 letter of Bishop Macarius, of the Patriarchal Exarchate, to St. Michael's Church regarding the parishioners' inquiry to him concerning their proposed affiliation with the Patriarchal Exarchate. See, discussion, P. 11, *supra*.

The balloting of May 7, 1967, was not a balloting to determine with which ecclesiastical jurisdiction St. Michael's Church would become affiliated. That question was decided by the parishioners with the cooperation of the Patriarchal Exarchate and with the cooperation of the American Metropolia, in 1955. The sole question decided by the balloting of May 7, 1967, was whether or not the basic documents of the parish should be amended in order to conform with the 1955 decision of affiliation with the American Metropolia. Therefore, the holding in *Mazaika v. Kaunczunas*, 229 Pa. 47 (1910), and similar cases, is not controlling nor applicable here. As the sample ballots attached to the Report of the Court Representative clearly establish, this was not a balloting to determine whether or not St. Michael's Church would be affiliated with the American Metropolia, because that decision was made in 1955, and has continued in effect to the present time. The balloting was simply to determine whether or not the basic documents of the parish should be amended to conform with the 1955 decision of affiliation with the American Metropolia. Had the vote of May 7, 1967, been against the resolutions to amend the Charter and Articles of Incorporation (and By-Laws), of the parish, then its effect would have been to repudiate the 1955 decision of affiliation with the American Metropolia. Thereafter, the parish undoubtedly would have become affiliated with the Patriarchal Exarchate and its Charter and Articles of Incorporation would have been amended so as to conform with such an affiliation, as was suggested to the parish by Bishop Macarius, of the Patriarchal Exarchate, in 1948.

Accordingly, defendants' first exception to the Report of the Court Representative is dismissed, in that the court did not exceed its authority nor err as a matter of law, by conducting the election and balloting of May 7, 1967. Moreover, the balloting was not designed to deter-

mine an evidentiary issue since the affiliation of St. Michael's Church with the American Metropolia, occurred in 1955.

2. This exception is dismissed. The balloting of the parishioners to amend their Charter and Articles of Incorporation (and By-Laws) does not violate the Lay Control of Church Property Act of April 26, 1858, P. L. 328, 10 P. S. 81, as amended, nor does it violate the said Charter and Articles of Incorporation of St. Michael's Parish.

The adoption of the resolutions to amend the basic church documents is in conformity with the Charter and Articles of Incorporation, and consistent with the 1955 decisions of the highest ecclesiastical authorities—the decisions of the Patriarchal Exarchate and of the American Metropolia, that St. Michael's Parish became affiliated under the hierarchy of the American Metropolia.

3. The balloting of May 7, 1967, does not violate the authority of *Appeal of Schnorr*, 67 Pa. 138 (1871), and similar case authorities, due to the fact that the Patriarchal Exarchate consented to the jurisdictional affiliation of St. Michael's Church with the American Metropolia in 1955, and the property of St. Michael's parish has not been diverted to any purpose inconsistent with its Charter and Articles of Incorporation, that purpose being, "the support of public worship of Almighty God according to the Doctrine and Ritual of the Russian Orthodox Greek Catholic Church" (Article II of the Charter and Articles of Incorporation).

Accordingly, this exception is dismissed.

4. The balloting of May 7, 1967, for reasons discussed, supra, does not violate the Constitution of the United States, nor the Constitution of Pennsylvania. The ballot-

ing merely followed, was consistent with and was in conformity with the 1955 decisions of the parishioners, of the Patriarchal Exarchate and of the American Metropolia, regarding the affiliation of St. Michael's Parish with the Russian Orthodox Greek Catholic Church hierarchy of the American Metropolia.

Accordingly, this exception is dismissed.

5. This exception is also dismissed due to the well-established fact that the balloting did not attempt to remove St. Michael's Parish from one ecclesiastical jurisdiction to another. The balloting was simply a vote upon resolutions to amend the Charter and Articles of Incorporation (and By-Laws) of this parish, which had been continuously affiliated with the American Metropolia since 1955.

6. This exception is dismissed due to the fact that copies of the court order of April 14, 1967, were personally served upon the attorneys for each of the groups of litigants involved in this matter, on the said date of the court order. The order provided for regular announcements of the election and balloting, on the three Sundays between the date of the order and the date of the meeting of May 7, 1967. Moreover, the vast majority of the parishioners of St. Michael's Parish were present on May 7, 1967, thereby establishing the effectiveness of the communication of the Order of April 14, 1967, to the members of this church.

7. The Report of the Court Representative establishes that the records of the parish were in the possession of the Court Representative from April 26, 1967 to May 7, 1967, in accordance with the court order of April 20, 1967, which directed that all such records be delivered to the office of the Court Representative, and that the defendants failed to comply with this order, and did not request to re-

view the said records prior to the meeting date of May 7, 1967. This exception is, therefore, dismissed.

8. This exception is without merit and is dismissed due to the fact that defendants' counsel had specific notice of the contents of the court order of April 20, 1967, regarding the delivery of lists, records and other materials to the office of the Court Representative, in preparation for the meeting of May 7, 1967.

9. This exception fails to recognize that the court ordered all membership records, and other records relative to the eligibility of electors, be delivered to the Court Representative on April 26, 1967. They were so delivered by the plaintiffs, and were thus available for inspection and review by the defendants, had they chose to exercise this right prior to the meeting date of May 7, 1967. This exception is, therefore, dismissed.

10. This exception is dismissed due to the fact that it is basically defamatory.

In this regard to this exception and the prolonged litigation involved herein, the court deems it apropos to quote what was stated by the U. S. Supreme Court in *Watson v. Jones,* 13 Wallace 679, 735:

> "For the same reasons we have held it under advisement for a year; not uninfluenced by the hope that since the civil commotion, which evidently lay at the foundation of the trouble, has passed away, that charity, which is so large an element in the faith of both parties, and which, by one of the apostles of that religion, is said to be the greatest of all the Christian virtues, would have brought about a reconciliation. But we have been disappointed."

11. The defendants failed to comply with the order of April 20, 1967, which sought to organize the election and balloting of May 7, 1967, in an orderly manner.

The plaintiffs did comply with the court order of April 20, 1967, and thus on May 5, 1967, the Court Representative met with representatives of the plaintiff in order to prepare the ballots to be used at the May 7, 1967 meeting, so that they conformed with the nominations for church officers submitted by the plaintiffs, and so the ballots would also conform with the resolutions of the Parish Council to amend the Charter and Articles of Incorporation (and By-Laws) of the parish. The defendants knew that the election and balloting of May 7, 1967 was to be by written ballot (order of April 14, 1967) and that ballots would, therefore, have to be prepared by the Court Representative.

Accordingly, this exception is dismissed.

12. The defendants failed to comply with the court order of April 20, 1967, in that they failed to submit their lists and records pertaining to proposed eligible voters. Accordingly, this exception is dismissed.

13. The defendants were clearly put on notice of the contents of the court orders pertaining to the meeting of May 7, 1967. They cannot now complain of their own failure to inquire of the court or of the Court Representative, of the compliance with the court orders by the plaintiffs, prior to and in preparation for the election and balloting of May 7, 1967. This exception is, therefore, dismissed.

14. The resolutions to amend the basic church documents were fully and carefully explained by the Court Representative to the parishioners prior to the balloting of May

7, 1967. Moreover, the parishioners were fully aware of the jurisdictional conflict existing in this church over the years of the pendency of this litigation, and without any doubt, each of the parishioners present at the meeting of May 7, 1967, was fully aware of the contents and meaning of the resolutions upon which they cast their ballots on that date. Accordingly, this exception is also dismissed.

15. The resolutions to amend the Charter and Articles of Incorporation (and By-Laws) of St. Michael's Church, were clearly in conformity with Conclusion of Law 17 of the Adjudication of December 16, 1966.

Moreover, as stated, they were carefully explained to the parishioners prior to the balloting of May 7, 1967, and upon the request of one of the parishioners, they were also explained in the Russian Language by counsel for the plaintiffs, whom the Court Representative knew to be competent to make such an explanation in the Russian Language.

Various requests to read from the Adjudication of December 16, 1966, were denied at the meeting of May 7, 1967, due to the fact that time did not allow for a prolonged session of reading and discussion, and due to the fact that the purpose of the meeting of May 7, 1967, was to vote for church officers and to vote upon the proposed amendments to the Charter and Articles of Incorporation (and By-Laws). Moreover, the report of the Court Representative establishes that the meeting was six hours in duration, from one to seven o'clock, P.M. Therefore, this exception is dismissed.

16. St. Michael's Church was affiliated with the Patriarchal Exarchate from 1950 to 1955, and has been affiliated with the American Metropolia from 1955 to the present. This fact was found by the Chancellor in his Adjudi-

cation of December 16, 1966, and was communicated to the parishioners in his Adjudication of that date.* The fact that the proposed amendments to the Charter and Articles of Incorporation (and By-Laws) did not state this fact, clearly does not render them defective. Therefore, this exception to the Report of the Court Representative is also dismissed.

17. The proposed amendments to the Charter and Articles of Incorporation (and By-Laws) of St. Michael's Church were duly adopted by the Parish Council prior to the meeting of May 7, 1967, in accordance with Article 8 of the Charter and Articles of Incorporation. Therefore, this exception must also be dismissed.

18. The litigation involving this church commenced on February 1, 1963. Accordingly, the court ordered that all members of the parish who were full members as of that date were eligible to vote upon the proposed amendments to the Charter and Articles of Incorporation (and By-Laws). This was clearly the proper "cut-off" date for eligibility to vote upon the proposed resolutions, because, thereafter, the parish became seriously divided into two groups of opposing litigants, those favoring a hierarchical affiliation with the American Metropolia, and those favoring a hierarchical affiliation with the Patriarchal Exarchate.

Moreover, the defendants were not prejudiced by this order, defining the eligibility of electors to vote upon the proposed amendments, due to the fact that the vast majority of those members who joined St. Michael's Parish after February 1, 1963, were loyal to the parish priest and to the affiliation of the parish with the American Metropolia.

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*The adjudication was reviewed and explained to some 300 parishioners, in court, on this date.

19. The report of the Court Representative establishes that the meeting of May 7, 1967, was six hours in duration, that the subject matter of the meeting—the election of church officers and the balloting upon the resolutions to amend the Charter and Articles of Incorporation (and By-Laws) of the parish, was fully and carefully explained to the parishioners, and that the Court Representative answered various questions and made various explanations, all of which are fully set forth in his report. There is no question but that the Court Representative properly exercised his discretion by not permitting discussion, readings from the Chancellor's Adjudication and questions to take up the entire afternoon designated for the meeting, and thereby be foreclosed in carrying out his assignment of conducting an election and a balloting at the parish. In addition to the Report of the Court Representative, an officer of the parish kept detailed minutes of the meeting of May 7, 1967, which are the official record of the parish of the election and balloting proceedings of that date. The fact that no court stenographer was present at the meeting is of no importance, in view of the fact that ample notice was given to the parishioners that the purpose of the meeting of May 7, 1967, was to elect officers of the parish by written ballot, and to vote upon the resolutions to amend the basic parish documents, also by written ballot.

Therefore, this exception to the Report of the Court Representative is likewise dismissed.

20. The Court Representative, as his report establishes, carefully explained the significance of the resolutions to be voted upon by the parishioners, at the meeting of May 7, 1967. The court is confident, based upon its study of the Court Representative's Report, that he carried out his assignment in a fair and impartial manner, under difficult circumstances, which required him, among other things, to authorize the calling of the police in order to

keep order in the meeting hall. The court is confident that every qualified elector was given the opportunity to cast his or her ballot on May 7, 1967, upon the issue presented to them in the form of the resolutions to amend the Charter and Articles of Incorporation (and By-Laws) of St. Michael's Church. This exception is, accordingly, dismissed.

21. The Court Representative acceded to the request that the priest of St. Michael's Parish be permitted to open and close the meeting of May 7, 1967, with a traditional prayer. Counsel for the plaintiffs was called upon by the Court Representative to make a translation in the Russian Language of the explanation of the significance of the balloting, and of the use of the prepared, printed ballot. He was called upon to do this, as reported by the Court Representative, due to the fact that he was known by the Court Representative to be competent to make such an explanation in the Russian Language. Accordingly, the alleged "impression of partiality" contained in this exception is without merit, and the exception is dismissed.

22. The balloting of May 7, 1967, took place upon tables, which were conveniently placed to handle the large crowd of parishioners present in the meeting hall. The alleged "impression of partiality" regarding the placing of the voting tables as contained in this exception is without merit, and is, therefore, dismissed.

23. Representatives of the defendant group were present at the voting tables and observed every ballot which was given to the electors, after their names were checked on the voting lists, throughout the balloting. The Report of the Court Representative establishes that a full opportunity to observe the balloting was afforded to all who wished to observe. This exception is, therefore, dismissed.

24. No representative of the defendant group was refused a seat at the balloting tables. This exception is, accordingly, dismissed.

25. The defendant group of parishioners were given a full opportunity to place the names of persons in nomination for the church offices, and accordingly, this exception is without merit and is dismissed.

26. The Report of the Court Representative forcefully establishes that the meeting of May 7, 1967 was impartially conducted and that all statements made by the Court Representative were impartial statements, designed to inform the parishioners of information requested by them in the form of questions to him, or statements that he was required to make in executing his assignment of that day. Accordingly, this exception is dismissed.

27 through 33. The matters raised in these exceptions are of no merit, since they raise matters which are basically argumentative and repetitious. These exceptions are, therefore, dismissed.

34. The Court Representative's Report establishes that a secret ballot procedure was followed, and was honored. The Report establishes that all ballots were personally handed to the electors by the Court Representative and were, after being marked, deposited in ballot boxes which, at all times, were guarded and controlled by a court officer. It was necessary that the financial secretary of the parish be present at the balloting tables in order that the electors would have their names "checked" as having been given a ballot, so as to prevent any person from voting twice. The parish priest was present at the voting tables, as were representatives of the defendants, in order to advise the Court

Representative of the names of the individual electors and to assure that all persons who were qualified to vote, were given an official ballot. After an elector was given a ballot and his or her name was "checked" upon the voting lists, he was asked by the Court Representative to move to the far end of the voting area, to mark the ballot and to deposit it in the ballot box. Accordingly, this exception is without merit, and is dismissed.

35. This exception is without any factual foundation whatsoever. The ballots have always remained in the exclusive possession of the Court Representative, as established by his report. The exception is, therefore, dismissed.

36 through 38. These exceptions are properly covered by the report of the Court Representative and need no further comment here. They are, therefore, dismissed.

39. The report of the Court Representative establishes that the official membership records of the parish were in his possession for the ten day period prior to the meeting of May 7, 1967, that the orders of the court pertaining to the meeting gave full notice to counsel of the requirement of delivery of those records to the Court Representative, and that anyone who wished to inspect those records, or to inspect any lists or other documents submitted to the Court Representative, would have been permitted to do so, had they asked to do so. This exception is, therefore, dismissed.

40 and 41. Again, defendants' counsel was given full notice of the pre-election procedures to be followed, by him and by plaintiffs' counsel, in accordance with the court orders relating thereto, and therefore, these exceptions are without merit, and are dismissed.

42. This exception is argumentative and requires no comment here. It is, accordingly, dismissed.

43. This exception is without any merit whatsoever, and is dismissed. Each elector who voted at the meeting of May 7, 1967, was properly identified and signed a voting list, before being given a ballot.

44. Proper notices and announcements of the scheduling of the meeting of May 7, 1967, were given to the parishioners of St. Michael's Church. The record establishes that the meeting was heavily attended by the parishioners, and that all members were fairly and properly afforded the right to cast their ballots. This exception is, therefore, dismissed.

The Report of the Court Representative has been carefully studied and reviewed by the Court en Banc. It is hereby fully confirmed by the court, and it is adopted by the court as its report of the proceedings at St. Michael's Parish on May 7, 1967. The conclusion as to the validity of the election as stated in the report is affirmed, and the written recommendation of the Court Representative contained therein is, likewise, affirmed. The order of the Chancellor of May 10, 1967, is also affirmed.

The petition for clarification of the Adjudication of the Chancellor requires no comment nor discussion, in view of this opinion, and is, therefore, dismissed.

The exceptions of the plaintiffs and the defendants to the court orders of April 14, 1967 and April 20, 1967, require no further comment nor discussion, and those exceptions are also dismissed.

The Adjudication of the Chancellor of December 16, 1967, except as altered, amended and changed by this opin-

ion of the Court en Banc, is affirmed, and accordingly the court enters its final decree in this matter, as follows:

FINAL DECREE.

AND NOW, TO WIT, this 4th day of October, 1967, a Final Decree is entered in this case in accordance with this opinion.

The amendments to the Charter and Articles of Incorporation, and to the By-Laws, of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, as duly adopted by the parishioners on May 7, 1967, are hereby confirmed and may be recorded.

The Prothonotary is directed to enter a final judgment in favor of the plaintiffs and against the defendants and against the added defendants upon the plaintiffs' complaint in equity.

The Prothonotary is directed to enter a final judgment in favor of the plaintiffs (as defendants in the counter-claim of the defendants and added defendants) and against the defendants and added defendants upon the counter-claim of the defendants and added defendants.

Concur:

FRANCIS SHUNK BROWN,
P. J.

CHARLES L. GUERIN,
J.

RAYMOND PACE ALEXANDER,
Chancellor in Equity.

APPENDIX C.

(3270a) DECREE NISI.

AND NOW, TO WIT, this Dec. 16, 1966 day of December, 1966, a Decree Nisi is entered in this case in accordance with the Findings of Fact and Conclusions of Law contained in this Adjudication.

The Prothonotary shall give notice to the attorneys for the litigants in this case, to wit: Ivan Michaelson Czap, Esquire and John S. Manos, Esquire of the filing of this Adjudication and Decree Nisi; and he shall further notify the said attorneys that unless exceptions are filed hereto within twenty (20) days from the date of this Adjudication and Decree Nisi, that a Final Decree shall be duly entered upon the record by the said Prothonotary.

RAYMOND PACE ALEXANDER,
J.

APPENDIX D.

(3569a) OPINION OF COURT EN BANC.

The Report of the Court Representative has been carefully studied and reviewed by the Court en Banc. It is hereby fully confirmed by the court, and it is adopted by the court as its report of the proceedings at St. Michael's Parish on May 7, 1967. The conclusion as to the validity of the election as stated in the report is affirmed, and the written recommendation of the Court Representative contained therein is, likewise, affirmed. The Order of the Chancellor of May 10, 1967, is also affirmed.

The petition for clarification of the Adjudication of the Chancellor requires no comment nor discussion, in view of this opinion, and is therefore, dismissed.

The exceptions of the plaintiffs and the defendants to the court orders of April 14, 1967 and April 20, 1967, require no further comment nor discussion, and those exceptions are also dismissed.

The Adjudication of the Chancellor of December 16, 1967, except as altered, amended and changed by this opinion of the Court en Banc, is affirmed, and accordingly the court enters its final decree in this matter, as follows:

(3570a) FINAL DECREE.

AND NOW, TO WIT, this 4th day of October, 1967, a Final Decree is entered in this case in accordance with this opinion.

The amendments to the Charter and Articles of Incorporation, and to the By-Laws, of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, as duly adopted by the parishioners on May 7, 1967, are hereby confirmed and may be recorded.

The Prothonotary is directed to enter a final judgment in favor of the plaintiffs and against the defendants and against the added defendants upon the plaintiffs' complaint in equity.

The Prothonotary is directed to enter a final judgment in favor of the plaintiffs (as defendants in the counterclaim of the defendants and added defendants) and against the defendants and added defendants upon the counterclaim of the defendants and added defendants.

Concur:

FRANCIS SHUNK BROWN, JR.,
P. J.

CHARLES L. GUERIN,
J.

RAYMOND PACE ALEXANDER,
Chancellor in Equity.

APPENDIX E.

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH v. UHNIAT ET AL., APPELLANTS.

Churches—Local church constituent part of hierarchical church organization—Constitutional law—Separation of church and state—Decrees of highest church tribunal binding on civil courts—Action by church members effecting transfer of church property to competing hierarchy—Lay Control of Church Property Act—The Russian Orthodox Greek Catholic Church—The Russian Orthodox Church of America.

1. Where a local church is a constituent part of a hierarchical church organization, equipped with ecclesiastical judicatories, the doctrine of separation of church and state requires that the decrees of the highest church tribunal be binding on the civil courts [234].

2. The constitutional protection of hierarchical organizations precludes not only legislative and judicial action which would destroy church government, but also action by church members themselves which effects a transfer of church property from the control of one hierarchy into the hands of a competing hierarchy [237].

3. Under the Lay Control of Church Property Act of June 20, 1935, P. L. 353, a local church cannot sever its relation with the ecclesiastical body under whose direction it was organized and with which it has continually been affiliated and retain ownership of church property without the consent of such ecclesiastical body [238].

4. In this action in equity, involving property rights, it was *Held* that the plaintiff church was subject to the patriarchal jurisdiction of the general Russian Orthodox Church, officially known as "The Russian Orthodox Greek Catholic Church", and not to the jurisdiction of "The Russian Orthodox Church of America", commonly known as the "Metropolia".

5. It was *Held* that the charter granted to plaintiff church clearly placed it in the hierarchical structure of the Russian Orthodox Church under the Holy Synod, that the succession from the Holy Synod to the Patriarchate is recognized as canonical by the Russian Orthodox Church and accordingly must be regarded as such by the civil courts, and that the lower court erred in going beyond the charter to resolve the instant dispute.

MR. JUSTICE ROBERTS dissented.

Argued November 12, 1968. Before BELL, C. J., JONES, COHEN, EAGEN, O'BRIEN and ROBERTS, JJ.

Appeals, No. 351, Jan. T., 1967, and No. 254, Jan. T., 1968, from decrees of Court of Common Pleas No. 3 of Philadelphia County, Dec. T., 1962, No. 3343, in case of St. Michael and Archangel Russian Orthodox Greek Catholic Church et al. v. Peter Uhniat, et al. Decrees reversed; reargument refused January 12, 1970.

Equity. Before ALEXANDER, J.

Decree nisi entered in favor of plaintiffs; defendants' exceptions dismissed and final decree entered in favor of plaintiffs and against all defendants on both the complaint and defendants' counter-claim. Defendants appealed.

John S. Manos, with him *Philip Adler*, of the New York Bar, for appellants.

Ivan Michaelson Czap, for appellees.

OPINION BY MR. JUSTICE EAGEN, November 11, 1969:

In this action in equity, the basic issue is whether St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia (St. Michael's) is subject to the patriarchal jurisdiction of the Moscow-based general Russian Orthodox Church, officially known as "The Russian Orthodox Greek Catholic Church" (Russian Orthodox Church), or is it within the jurisdiction of "The Russian Orthodox Church of America" commonly known as the "Metropolia." Upon the determination of the proper jurisdiction hinges certain property rights.

The chancellor in the court below, after extended hearings, entered an adjudication and a decree nisi ruling that as of that date St. Michael's was within and under the ecclesiastical jurisdiction of the Patriarch of the Russian Orthodox Church, but that it could, by a majority vote of its parishioners, join the "Metropolia." After considering exceptions to the chancellor's adjudication and decree, the court en banc entered a final decree ruling in favor of "Metropolia" jurisdiction. Two interrelated appeals are now before us.[1]

Although the background of the Russian Orthodox Church, both in the Soviet Union and in the United States, is not at issue here, it appears to us to be quite necessary

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[1] One appeal (No. 351) was filed from the lower court's decree ordering that a parishioners' meeting be held to vote on the jurisdictional affiliation of the Church (see infra). The second appeal (No. 254) was filed from the final decree entered below. Our disposition of the basic issue disposes of both appeals.

to relate that ecclesiastical history in order to put this controversy in its proper context. In the rendition of that history, we are aided by the thorough and scholarly discussion of the chancellor below.

The Russian Orthodox Church is an autocephalous member of a family of churches known as the Eastern Orthodox Churches, and whose official title is the "Holy Orthodox Catholic Apostolic Eastern Church." Orthodoxy was first introduced into Russia in the ninth and tenth centuries through the missionary activities of the Patriarch of Constantinople. Christianity became firmly established in Russia by the end of the tenth century, and continued to flourish there until the Bolshevik Revolution in 1917.

In the middle of the fifteenth cenutry, Constantinople was conquered by the Turks, and the power of the Patriarch of Constantinople quickly waned, to the delight of the Russians. In 1453 the Russians, for the first time, elected their own Metropolitan, and by the end of the sixteenth century, the Patriarchate of Russia had been established.

The independent Patriarchate was not long to enjoy harmonious relations with the Russian Czars; the latter increasingly exerted their authority and influence over the Church until Peter the Great discontinued the Patriarchate in 1721, and established in its place the "Holy Synod", a body composed of representative bishops, religious orders and priests, and of course, of the Czar himself who became known within the Synod as the "Supreme Judge of the Spiritual College." The Church continued in this subjugated role, a mere branch of the government, until the Revolution of 1917. Acting with the permission of the Provisional Government, the first Church Sobor (convention) in centuries was held in 1917-1918; the outcome was the reestablishment of the Patriarchate, and the selection of Tikhon as Patriarch.

The future of the Russian Church was doubtful in a political system which regarded atheism as the state reli-

gion. Immediately after coming to power, the Bolshevik Government restricted, if not totally abrogated, the rights of the Church. Tikhon encouraged church members to resist property confiscation by the government, but in 1922, he was arrested and incarcerated.

With Tikhon out of the way, a small group of church clergymen, unfatihful to their promises to Tikhon to bestow complete administrative powers to a designated bishop during his absence, held a Sobor, abandoned the Patriarchate and created the "Provisional Supreme Administration" as the ruling body in the Russian Church. The new organization come to be called the "Living Church" and its influence spread rapidly because its founders kept in the good graces of the Soviet Government.

In 1923, the "Living Church" held its second Sobor and defrocked Tikhon, who died in 1925.

Tikhon's successors were also imprisoned because of their unwillingness to negotiate with the Soviet Government. In 1927, however, Sergius, the suffragan Patriarch, reached an Accord with the government, promising on his part, to oppose the counterrevolutionary activities asserted against the Soviet Government; the government reciprocated and gave recognition to the Patriarchal Church. Thereafter the "Living Church," bereft of its favored position with the government which it enjoyed from 1922 to 1927, declined in influence.

The Patriarchal Church lived through many shaky days from 1927 until 1932. Thereafter, the Soviet Government exerted less control over the Church's internal operations, and when the Church supported the Russian war effort in World War II, the government became more tolerant of it. Stalin restored the office of Patriarch in 1943, and Sergius was chosen Patriarch. Following Sergius' death in 1945, Alexy was elected Patriarch and continues in that office now. The Soviet Government is generally tolerant of the

Church today and, apart from its mass anti-religious propaganda, does not interfere with the Church's activities.

The Russian Orthodox Church is a missionary church. Late in the eighteenth century, a mission was established in Alaska. With the purchase of Alaska by the United States in 1867, the mission was elevated to a diocese and the See was eventually transferred from Alaska to San Francisco. In 1900, Russian Orthodoxy began to spread and grow dramatically due to the immigrations of the Greek, Russian, Slavic and Syrian peoples. The See of the North American Diocese was moved to New York City in 1905, and the famous St. Nicholas Cathedral, itself the object of frequent litigation, was erected.

St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia was founded in 1909 and incorporated in 1915. The Corporate Charter quite positively reveals that St. Michael's was founded as a constituent part of the Russian Orthodox Church. Article II, Section 2 of the Charter provides as follows: "This Church acknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North American Diocese and as such, it accedes to, recognizes, and accepts the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly."

Until the Russian Revolution of 1917, Orthodoxy in the United States existed without schism or dissension; the ecclesiastical right and authority of the Holy Synod was unquestioned. The political situation in Russia was, however, bound to affect the Church wherever it was established.

Although Moscow fell to the Bolsheviks in 1917, the "White Russians" in the south continued resistance. When in 1921 it had become obvious that their efforts were

doomed to failure, many of the ecclesiastics left Russia and, at the invitation of the Serbian Patriarch, held a conference at Karlovitzy, Yugoslavia. The result was the formation of the "Russian Churches Outside of Russia" (the Karlovitz Synod group) whose supreme authority was a "Synod of Bishops Outside Russia." This group continued its active resistance to the Bolshevik take-over, and fought for the restoration of the Czarist government. The Karlovitz Synod group has been declared to be uncanonical by Patriarchs Sergius and Alexy.

In 1923, the "Living Church" sent John Kedrovsky, a political bishop, to the North American Diocese. Kedrovsky, in March 1924, began his endeavors to gain control of St. Nicholas Cathedral in New York City, claiming that he was the legitimate Archbishop of the North American Diocese. By the time Kedrovsky instituted his suit to gain St. Nicholas Cathedral, the Patriarchal Archbishop Platon had already been dismissed from his office by Patriarch Tikhon because of his support of the Russian counter-revolutionaries.[2]

In April 1924, an all-American Sobor was held in Detroit. The representatives to that Sobor suspected strongly that Kedrovsky was a pawn of the Soviet Government; they also feared that a new Patriarchal Archbishop might be a tool of the Soviet State. Determined to resist Kedrovsky's efforts to wrest control of church property from them, the delegates formed the American Diocese of the Russian Orthodox Church ("Metropolia") and elected Platon as

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[2] In 1917, Evdokim, the Archbishop of the North American Diocese, returned to Russia to attend the Sobor which reinstituted the Patriarchate. He never returned to the United States. Suffragan Archbishops temporarily administered the North American Diocese until September 1923 when Platon was appointed Archbishop. Platon had previously served as Archbishop of the North American Diocese from 1907 to 1914.

their Archbishop.* The "Metropolia" thus established is hierarchical in nature, structured with the governing Metropolitan, a Council of Bishops, and a Council of the Laity. The "Metropolia" has always asserted that its origin is legitimate and that it has a valid claim on Orthodoxy. Authority for its existence is said to rest upon a Patriarchal Ukaz (decision) of November 20, 1920, which temporarily gave authority to churches outside Russia to govern themselves until the political situation in Russia calmed.

The lower court inferred, quite correctly we think, that the "Metropolia" was not regarded as a schismatic and competing hierarchy of the Patriarchate until 1933, when the Patriarch sent Benjamin to the North American Diocese to replace Platon as Archbishop. This is so because the Patriarchal Decree of 1924 dismissing Platon for his opposition to the Soviet Government was effective only when Platon's successor announced the dismissal to him, which, of course, did not occur until 1933. Benjamin stayed in the United States as Patriarchal Exarch, but the "Metropolia" continued to exist and to grow.

Thus, three rival hierarchies (the Patriarchal Exarchate, the "Metropolia"; and the Karlovitz Synod Group), each claiming to be the legitimate representative of Orthodoxy in the United States, exist and vie against each other today.

The history of St. Michael's Church is best approached by following the ecclesiastical path traveled by Bishop Adam who was, without question, the most important figure in the life of St. Michael's. The origin of most of St. Michael's parishioners was Carpatho-Russia, which prior to World War I was a part of the Austro-Hungarian Empire, and after World War I became the territory of Poland and Czechoslovakia. Many immigrants came from Carpatho-Russia to the United States in the early 1900's,

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* St. Michael's was not represented at this Sobor.

and in 1916, the Holy Synod and Russian Emperor granted the Carpatho-Russians permission to establish an independent diocese. The Holy Synod appointed a special Carpatho-Russian Suffragan Bishop.

In 1923, Adam was consecrated Bishop of the Carpatho-Russian Diocese. St. Michael's joined Adam's diocese, and remained under his leadership until his retirement in 1954. In 1935, Bishop Adam reached an agreement with the "Metropolia" and joined that organization, still retaining, however, a measure of independence for his parishes. In 1939, Adam withdrew from the "Metropolia", preferring instead the total independence to which he had formerly been accustomed. From 1939 to 1944, Adam governed his parishes without hierarchical allegiance.[1]

In 1944, Adam joined the Patriarchate, and eventually became the Exarchal "Locum Tenens" in the United States.

The causal background of the instant controversy probably has its roots in the occurrences at St. Michael's since 1939. When Adam disaffiliated with "Metropolia" in 1939, St. Michael's had as its parish priest Reverend George Cucura, who came to St. Michael's in 1936 as a priest faithful to Bishop Adam. Reverend Cucura continued his allegiance to the "Metropolia" after 1939. The parishioners desired to dismiss Reverend Cucura from 1939 until 1949, but were unable to obtain another priest. The parishioners turned to the Patriarchate to find a priest, but that organization demanded that St. Michael's first amend its Charter, so as to align itself unmistakably with the Patriarchate. That condition was rejected. Finally, the "Metropolia" assigned another priest to St. Michael's and instructed Reverend Cucura to serve another parish. Reverend Cucura refused, withdrew from "Metropolia" and joined the Patriarchate. Thereafter, he was influential in bringing Patri-

[1] In 1939, Adam was disciplined by the Patriarchate which, for the first time, questioned the validity of his consecration as a Bishop.

archal priests to St. Michael's, and St. Michael's had Patriarchal priests until late 1955 when the Patriarchate was unable to furnish a priest. At that time, the "Metropolia" sent Reverend Alexander Fedoronko to St. Michael's; he has remained there since then.[5]

In 1962, Reverend Fedoronko announced to the parish that St. Michael's was a Metropolitan Church. That statement was severely criticized by a substantial faction of St. Michael's which denied "Metropolia's" jurisdiction, and claimed Patriarchal jurisdiction for St. Michael's. When Reverend Fedoronko postponed a parish meeting set for the election of officers on February 3, 1963, the Patriarchal faction nevertheless held an election, and affirmed St. Michael's relationship with the Patriarchate, giving Reverend Fedoronko thirty days notice to leave the parish. The "Metropolia" ecclesiastical courts issued decrees disciplining the leaders of the Patriarchal group; Reverend Fedoronko and certain parish members then brought suit against the Patriarchal faction, seeking an injunction against their interference with the alleged right of "Metropolia" to control the parish. The Patriarchal faction counterclaimed, seeking for itself, an injunction restraining Metropolitan influence over St. Michael's.

The Patriarchal faction argued that St. Michael's was founded as a church united jurisdictionally with the Russian Orthodox Church under the Holy Synod; that the substitution of the Patriarch for the Holy Synod in 1917 as the supreme ruling authority in the Church was canonical and resulted merely in an organizational change within the Church, leaving Church doctrine and ritual entirely intact; that the Patriarchate has never relinquished or abandoned its control or influence over St. Michael's and that the Lay Control of Church Property Act, Act of June 20, 1935, P. L.

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[5] The Patriarch consented to Reverend Fedoronko's assignment at St. Michael's.

353, 10 P. S. §81, prevented the court from awarding the use of St. Michael's to the "Metropolia".

The "Metropolia" faction argued that the "Metropolia" has, by a kind of evolution, become the North American Diocese of the Russian Orthodox Church to which St. Michael's was dedicated in 1915, and hence, that it, consistent with the Charter, has the right to control St. Michael's.

The chancellor found that St. Michael's was founded in 1909, and incorporated in 1915 as a Church within the North American Diocese of the Russian Orthodox Church, and accordingly, under the authority of the Holy Synod; he found further that the substitution of the Patriarch for the Holy Synod as the supreme ruling authority within the Church was merely an organizational change, not at all affecting the basic nature of the Russian Church. The chancellor concluded, however, that the Charter could not resolve the controversy because at the time when St. Michael's founders dedicated the Church to the Russian Orthodox Church, it was the only hierarchical organization within the Russian Orthodox Church represented in America; that the founders of St. Michael's could not foresee the political changes which occurred in Russia in 1917, nor could they foresee the effect which the political changes had on the Russian Orthodox Church. In line with that reasoning, the chancellor undertook to discover what were the reactions of St. Michael's parishioners to the changes wrought by the Russian Revolution, and how those reactions affected St. Michael's jurisdictionally. The first reaction, said the chancellor, was a Church By-Law passed in 1925, permitting St. Michael's to select their ecclesiastical jurisdiction from among the several which then existed. According to the chancellor, the By-Law was consistent with the Charter, again because the Charter was formulated when there was but one Russian Orthodox hierarchy in the United States. The chancellor then found

that, acting pursuant to the 1925 By-Law, St. Michael's united with Bishop Adam's Carpatho-Russian Diocese from 1925 until 1935; from 1935 until 1939 with the "Metropolia"; from 1939 until 1944, with Bishop Adam; and from 1945 on, with the Patriarchate. The chancellor found that from the time when Reverend Fedoronko came to St. Michael's onward, practically all of St. Michael's jurisdictional ties have been with the "Metropolia". He concluded, however, that this de facto affiliation with the "Metropolia" and secession from the Patriarchate was in violation of the Lay Control of Church Property Act, supra, and constituted an illegal diversion of church property. According to the chancellor, a valid and legal union with "Metropolia" could have been accomplished by a majority vote of St. Michael's parishioners, but since the last majority jurisdictional vote was in favor of the Patriarchate, the de facto affiliation with the "Metropolia" was illegal. The chancellor concluded that St. Michael's could in the future finally bind itself to the "Metropolia" by a majority vote of its parishioners, and an amendment to its Charter.

Before the court en banc ruled on the exceptions to the decree nisi filed by both sides, the appellees, the "Metropolia" group, petitioned the court to conduct the annual election of officers. The court issued an order calling for a court-supervised election which was held on May 7, 1967. At that meeting over the strenuous objections of the appellants, the Patriarchal group, the majority of the parishioners voted to be under the "Metropolia" and to amend the Charter so as to make the affiliation permanent.

The court en banc accepted most of the chancellor's adjudication. It too found that St. Michael's affiliation with the "Metropolia" was consistent with the Charter of 1915, holding that the "Metropolia" was the legitimate successor of the Patriarchate, and the true North American Diocese since 1917. In effect, the court en banc held that the Patriarchate had abandoned the North American Diocese after

the Russian Revolution, releasing its claim upon it from 1917 until 1933 when it denounced the "Metropolia" and sent Benjamin to the United States as the Patriarchal Exarch. The court en banc, unlike the chancellor, held that St. Michael's became validly a part of the "Metropolia" in 1955 when it accepted Reverend Fedoronko as its parish rector, with the approval of the Patriarch. Thus, the court en banc held that the only jurisdictional effect the court-supervised election of May 7, 1967, was to affirm the already existing relation between St. Michael's and the "Metropolia", and to give authority for a Charter amendment which would recognize that relation and make it permanent. The appellants, the Patriarchal group, then appealed. For reasons that follow, we reverse.

The landmark decision in church-property disputes is *Watson v. Jones*, 80 U. S. (13 Wall.) 679 (1871). In that case, a local Prsebyterian Church became divided over the General Assembly's position on slavery; the minority faction of the congregation opposed the General Assembly's position, seized control of the church property, and seceded from the General Assembly. The Kentucky courts examined the position of the General Assembly, and concluded that it had illegally imposed upon civil matters. The litigation was brought to the federal courts on diversity jurisdiction, and the Supreme Court of the United States affirmed the Circuit Court's reversal of the Kentucky court; holding that the local church was a constituent part of the hierarchical church organization, equipped with eccelesiastical judicatories; that in such a situation, the doctrine of separation of church and state required that the decrees of he highest church tribunal be binding on the civil courts. The rule thus formulated was a radical departure from the English law as enunciated in *Craigdallie v. Aikman*, 1 Dow. 1, 3 Eng. Rep. 601 (H. L. 1813), and *Attorney-General ex rel. Mander v. Pearson*, 3 Mer. 353, 36 Eng.

Rep. 135 (Ch. 1817). The solution under English law was reached by ascertaining which church faction adhered to the *doctrine* espoused by the church founders, regardless of the decision of the highest church judicatories on the subject. This method of solution involved, of course, court introspection into what were the original doctrines held by the founders, and the ascertainment of which church faction was loyal to those doctrines. An obvious by-product of the English rule was the civil disregard of the decisions of church courts, and consequently, the discouragement of hierarchical religious systems. *Watson*, supra, decided on principles of federal common law, refused to assure doctrinal continuity at the risk of curtailing the growth and establishment of religious systems and ideas and at the risk of preventing the meaningful functioning of church judicatories.

The basic principles of *Watson*, supra, find constitutional emphasis in the decisions of the Supreme Court of the United States in *Kreshik v. St. Nicholas Cathedral*, 363 U. S. 190, 80 S. Ct. 1037 (1960); *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 73 S. Ct. 143 (1952); and most recently in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 (1969).

In *Presbyterian Church v. Hull*, supra, the United States Supreme Court foreclosed any possibility that the principles of *Watson*, supra, do not apply to the states. The nature of the dispute in *Presbyterian Church v. Hull*, supra, closely resembled the problem in *Watson*, supra. The hierarchical organization in both cases was the Presbyterian Church in the United States. In *Presbyterian Church v. Hull*, a local congregation sought to withdraw from the general church organization and, of course, to take the local church property with it. The reason asserted for the secession was that the General Assembly had, in certain matters, departed from the Church's traditional doc-

trine and teaching. Under Georgia law, the doctrinal-continuity approach of the English courts is followed, and the general church organization can hold a local church in trust only as long as it continues in the practice of traditional religious tenets. The Georgia courts submitted to a jury the question of whether the General Assembly had departed from the traditional doctrine, and the jury found that it had, thereby breaking the trust, and freeing the local church from the hierarchical structure. The Supreme Court granted certiorari and reversed the Georgia Supreme Court, finding the "departure from doctrine" element of the implied-trust theory unconstitutional.

The *Presbyterian Church* decision thus fosters denominational continuity and doctrinal evolution by making the decision of the Church tribunal the last word in the settlement of a church dispute arising in a hierarchical church organization.

Kedroff, supra, involved a dispute over the right to the use of St. Nicholas Cathedral in New York City. The parties in interest were the "Metropolia" and the Patriarchal Exarchate of the Russian Orthodox Church. The New York Court of Appeals awarded the use of the Cathedral to the American "Metropolia" on the ground that a New York statute transferred the administrative control of the Russian Orthodox Churches in North America from the supreme Church authority in Moscow to the authorities selected by a convention of the North American churches. The Supreme Court of the United States reversed, holding the pertinent legislation unconstitutional; the Court indicated that any legislation which determines in a hierarchical church ecclesiastical administration or the appointment of clergy or transfers church property from one group to another impinges upon the free exercise of religion. In *Kreshik*, supra, the Supreme Court, relying on *Kedroff*, again reversed the New York Court of Appeals

which on the basis of New York common law, awarded the Cathedral to the American "Metropolia", contending that the supreme church authority in Moscow was dominated by the secular authorities in the Soviet Union.

Kedroff, supra, and *Kreshik*, supra, just as *Watson*, supra, and *Presbyterian Church*, supra, give substance to the idea of denominational continuity, and thus the freedom of religious organizations to expand and evolve without fear of government censure. Here as in *Kedroff*, supra, we are confronted with a dispute over church property originally dedicated to the Russian Orthodox Church. In *Kedroff*, the transfer of church property from that hierarchical organization could not be accomplished by legislative fiat. Here, St. Michael's property cannot be transferred simply because a majority of its parishioners so desire. If that were permitted, then no real protection would be afforded to hierarchical religious systems. It seems to us that a logical reading of the relevant decisions of the United States Supreme Court produces the conclusion that the constitutional protection of hierarchical organizaions precludes not only legislative and judicial action which would destroy church government, but also action by church members themselves which effects a transfer of church property from the control of one hierarchy into the hands of a competing hierarchy. St. Michael's, whether a member of the Russian Orthodox Church of America or of the Patriarchal Exarchate (Russian Orthodox Church) is a constituent part of a church hierarchy. Given such a structure, we find untenable the chancellor's conclusion that the 1925 By-Law allowing St. Michael's to choose by majority vote its hierarchical allegiance, is consistent with its corporate Charter. The Charter secured St. Michael's relationship within a hierarchical organization; the By-Law, in effect, sought to make St. Michael's congregational in form.

Apart from the decisional law discussed above, the Lay Control of Church Property Act, supra, requires that the property of St. Michael's Church remain subject to the control of the Patriarchate. Construing that act in *Canovaro v. Brothers of the Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937), we held that a local church cannot sever its relation with the ecclesiastical body under whose direction it was organized and with which it has continually been affiliated and retain ownership of church property without the consent of such ecclesiastical body. See also, *Kraftician v. Greek Catholic Congregation*, 366 Pa. 431, 77 A. 2d 875 (1951); and *Gabster v. Mesaros*, 422 Pa. 116, 220 A. 2d 639 (1966).

We thus conclude that the lower court erred in going beyond the 1915 Charter to resolve the instant dispute. The Charter quite clearly placed St. Michael's within the hierarchical structure of the Russian Orthodox Church under the Holy Synod. The succession from the Holy Synod to the Patriarchate is recognized as canonical by the Russian Orthodox Church and accordingly must be regarded as such by the civil courts under *Watson*, supra, and *Presbyterian Church*, supra. The lower court has shown no authority for its conclusion that a dedication of a local congregation to a hierarchical general church organization is binding on the local church only until some other hierarchy, administratively and judicially independent of the first but embracing the same religious faith and precepts, comes along. That being so, the decrees of the lower court are reversed and the record is remanded for action consistent with this opinion.

It is so ordered. Each party to bear own costs.

MR. JUSTICE ROBERTS dissents for the reasons set forth in *St. John Chrysostom Greek Catholic Church v. Elko*.

APPENDIX F.

". . . the decrees of the lower Court are reversed, and the record is remanded for action consistent with this opinion.

It is so ordered. Each party to bear own costs.

Mr. Justice Roberts dissents for the reasons set forth in *St. John Chrysostom Greek Catholic Church v. Elko.*"

APPENDIX G.

MEMORANDUM OF THE COURT OF COMMON PLEAS OF PHILADELPHIA UPON REMAND FROM THE SUPREME COURT OF PENNSYLVANIA AND FINAL JUDGMENT.

February 16, 1970. By: ALEXANDER, J.

The Supreme Court of Pennsylvania entered its Opinion[1] in this case on November 11, 1969, and a petition for re-argument was subsequently denied.

The two Appeals disposed of by the Opinion of the Supreme Court of Pennsylvania were:

(1) An Appeal from the Order of this Court of April 14, 1967, which directed that an election and balloting be held at the plaintiff church on May 7, 1967, and

(2) An appeal from the Final Decree of this Court dated October 4, 1967, which (a) confirmed Amendments to the Charter and Articles of Incorporation, and to the By-Laws, of the plaintiff church St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, in accordance with the balloting conducted on May 7, 1967, and (b) which Final Decree also directed the entering of a Final Judgment in favor of the plaintiffs and against the defendants, and added defendandts, upon the plaintiffs' Complaint in Equity, and (c) directed the entry of a Final Judgment in favor of the plaintiffs (as defendants, in the counterclaim brought by the defendants and

[1] The Opinion of the Supreme Court of Pennsylvania is officially reported in Volume 436, Pa. State Reports, beginning at page 222 (1969). It is also reported in Volume 259 Atlantic Reporter, 2nd series, beginning at page 862 (1969).

added defendants) and against the defendants and added defendants, upon the said counterclaim of the defendants and added defendants.

The Supreme Court concluded as follows in regard to the principal issues presented in the said Appeals:

1. That the 1915 Charter of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, clearly placed the said church within the hierarchical structure of the Russian Orthodox Church under the Holy Synod, and that the succession from the Holy Synod to the Patriarchate is recognized as canonical by the Russian Orthodox Church and must be regarded as such by the Civil Courts of this country.

Accordingly, the Supreme Court concluded that St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, is clearly and indisputably subject to the jurisdiction of the Russian Orthodox Church officially known as "The Russian Orthodox Greek Catholic Church", commonly known as the "Patriarchate".

Likewise, it was concluded that St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia, Pennsylvania, is *not* within the jurisdiction of "The Russian Orthodox Church of America", commonly known as the "Metropolia".

2. That the *Lay Control of Church Property Act*, Act of the General Assembly of the Commonwealth of Pennsylvania, of June 20, 1935, P. L. 353, 10 P. S., Sec. 81, requires that the property of St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia, Pennsylvania, remain subject to the control of the Russian Orthodox Church, officially known as "The Russian Orthodox Greek Catholic Church", or the "Patriarchate".

Likewise, the Court concluded that the *Lay Control of Church Property Act*, supra, requires that the property of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, *not* be subject to the control of "The Russian Orthodox Church of America", commonly known as the "Metropolia".

It should be noted that the plaintiff church is a living institution and that it has functioned continuously in Philadelphia, since its founding in 1909. At the present time, the church has some 450 to 500 adult parishioners, including both groups of parishioners who were involved in this difficult and unfortunate litigation. It must be kept in mind that the requirements of the Supreme Court of Pennsylvania are: (1) that St. Michael's Church is under the jurisdiction of the Patriarchate, and (2) that the *Lay Control of Church Property Act* requires that the property of St. Michael's Church remain dedicated and subject to the control of the Patriarchate.

The Opinion of the Supreme Court of Pennsylvania does not require that any of the present parishioners of St. Michael's Church be excluded from the use of the church property, provided that they adhere to the requirements of the Patriarchal jurisdiction.

Accordingly, it is hoped that St. Michael's Church will continue to be a living institution in the City of Philadelphia, and that the present parishioners of that church, regardless of the prolonged litigation involving them, will adjust, reunite and live together in the St. Michael's Church, as they have done for more than 60 years.

NOW THEREFORE, this Court enters a Final Judgment in this case, in accordance with the Opinion of the Supreme Court of Pennsylvania:

FINAL JUDGMENT.

AND NOW, TO WIT, THIS 16th day of February, 1970, it is hereby ORDERED and DECREED as follows:

(1) That Final Judgment is entered in favor of the Defendants and Added Defendants, Peter Uhniat, et al., and against the Plaintiffs, St. Michael and Archangel Russian Orthodox Greek Catholic Church, et al., upon the Plaintiffs' Complaint in Equity;

(2) That Final Judgment is entered in favor of the Defendants and Added Defendants, Peter Uhniat, et al., and against the Plaintiffs, St. Michael & Archangel Russian Orthodox Greek Catholic Church, et al., upon the Counterclaim of the Defendants and Added Defendants;

(3) That St. Michael & Archangel Russian Orthodox Greek Catholic Church, is under and subject to the Hierarchical Jurisdiction of the Russian Orthodox Church, officially known as "The Russian Orthodox Greek Catholic Church", or the "Patriarchate", of which the present Patriarch is Alexy, Patriarch of Moscow, and Archbishop Jonathan, of St. Nicholas Russian Orthodox Cathedral, in New York City, is the Patriarchial Exarch, and Bishop Alexis, of Philadelphia, is the Bishop;

(4) That all property of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, a Pennsylvania Corporation, shall continue to be the property of the said corporation, and subject to the Hierarchical Jurisdiction of the Russian Orthodox Church, officially known as "The Russian Orthodox Greek Catholic Church", or the "Patriarchate", in accordance with

Article II, Section 2 of the Charter and Articles of Incorporation of St. Michael's Church, which provides as follows:

> "This Church acknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North American Diocese and as such, it accedes to, recognizes, and accepts the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly."

(5) That the purported Amendments to The Charter and Articles of Incorporation, and By-Laws, of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, which resulted from the balloting and election conducted at St. Michael's Church on May 7, 1967, and which were confirmed in The Final Decree of this Court, dated October 4, 1967, are null and void, in accordance with the said Opinion of the Supreme Court of Pennsylvania, of November 11, 1969, and the Prothonotary of this Court, and the Commissioner of the Department of Records of the City of Philadelphia, are directed to note that the said amendments are "null and void", in accordance herewith, upon the appropriate records of their offices;

(6) That the Charter and Articles of Incorporation of St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia, Pennsylvania, adopted in 1915, as unamended, are the governing documents of the said church, in accordance with the Opinion of the Supreme Court of Pennsylvania;

(7) That the Office of the Pastor of St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia, Pennsylvania, and the offices of the Trustees and

Church Committee of the said church, shall be subject to the decisions and directives of the Hierarchy of the Russian Orthodox Church, officially known as "The Russian Orthodox Greek Catholic Church", or the "Patriarchate".

s/ RAYMOND PACE ALEXANDER,
Senior Judge and Chancellor in Equity.

APPENDIX H.

MEMORANDUM AND ORDER.

February 27, 1970. By: ALEXANDER, J.

On February 16, 1970, this Court filed a Memorandum and Final Judgment in the above case, in accordance with the opinion of the Supreme Court of Pennsylvania, which remanded the case to the Court of Common Pleas of Philadelphia for the purpose of entering a Final Judgment therein.

Paragraph 7 of the Final Judgment February 16, 1970, provides as follows:

"That the Office of the Pastor of St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia, Pennsylvania, and the offices of the Trustees and Church Committee of the said church, shall be subject to the decisions and directives of the Hierarchy of the Russian Orthodox Church, officially known as 'The Russian Orthodox Greek Catholic Church', or the 'Patriarchate'."

Alexis, Bishop of Philadelphia, of The Russian Orthodox Greek Catholic Church, has appointed The Very Reverend Michael Barna as pastor of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, and has named a group of sixteen parishioners of the church, loyal to the Patriarchate, to serve as Trustees and the Church Committee, pending an assembly of a general meeting of the parishioners. Accordingly, this

Court enters the following Order, supplementing the Final Judgment entered in this case on February 16, 1970:

ORDER.

And now, to wit, this 27th day of February, 1970, it is hereby Ordered and Decreed that the Directives of Alexis, Bishop of Philadelphia, of The Russian Orthodox Greek Catholic Church, designating the Very Reverend Michael Barna as pastor of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania, and designating sixteen lay parishioners of the said church as Trustees and the Church Committee, shall be followed and adhered to by the parties to this litigation, and by the parishioners of the said church.

It is further Ordered and Decreed that the property of St. Michael and Archangel Russian Orthodox Greek Catholic Church, of Philadelphia, Pennsylvania shall be subject to the jurisdiction of The Russian Orthodox Greek Catholic Church, and of the said duly appointed pastor, and Trustees and Church Committee of the said church, in accordance with the directives of Alexis, Bishop of Philadelphia, of The Russian Orthodox Greek Catholic Church.

This Order and each of the provisions of the Final Judgment of this court of February 16, 1970, copies of which have been supplied to all parties involved in this matter, shall be effective forthwith.

s/ RAYMOND PACE ALEXANDER,

J.

APPENDIX I.

EXCEPTIONS.

AND NOW, March 19, 1970, plaintiffs having heretofore filed with the Court their Petition and Motion To Strike &c., under date January 28, 1970; and their Petition For Stay, and for Hearings, &c., under date 31, January, 1970; and more recently another Petition, on March 2, 1970, with Rule thereon, on which Petitions and Rules no formal action has been taken, but Judgment and an Order has been filed by the Court, to which said Judgment, and to which said Order Plaintiffs except and desire to record their Exceptions; the Plaintiffs now, for the Record, do file these EXCEPTIONS to the Judgment, and to the Order.

s/ IVAN MICHAELSON CZAP,
Attorney for Plaintiffs, the Parish, the Pastor-Rector, and the Church Warden.

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IN THE

Supreme Court of the United States

April Term, 1970.

No. [redacted] 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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1422 Chestnut Street,
Philadelphia, Pa. 19103,
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Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

INDEX

	PAGE
Citations to Opinions Below	2
Jurisdiction	4
Questions Presented	4
Constitutional Provisions	5
Statement of the Case	7
Presentation of the Federal Question	14
Reasons for Granting the Writ	14
Conclusion	17

TABLE OF CITATIONS

CASES:

Kedroff v. St. Nicholas Cathedral, 344 U. S. 94 (1952) 14

Kreshik v. St. Nicholas Cathedral, 363 U. S. 190 (1960) 14, 15

Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U. S. 440, 89 S. Ct. 601 (1969) 14, 15

St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko, 436 Pa. 243 (1969) 16

Watson v. Jones, 13 Wallace (U. S. S. C. A.) 679 (1871) 11, 14, 15

STATUTES:

1855, April 26, P. L. 328, §7 7

1187, June 2, P. L. 298, §1 7

1907, May 1, P. L. 132, §1 7

1913, May 20, P. L. 242, §1 7

1935, June 20, P. L. 353, §1 7

IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1970, No.

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of Pennsylvania entered 11 November 1969 in the above entitled cause.

CITATIONS TO OPINIONS BELOW.

A. The Opinion (entitled Adjudication) of the Common Pleas Court of Philadelphia, not yet officially reported, filed December 16, 1966 by Alexander, J., the Chancellor, is, because of its length (encompassing single-spaced pages 3195a through page 3270a of Volume 12 of the Transcript of Record) set forth in Appendix A, separately printed and bound, pages 1 to 84.

B. The Opinion of the Court-en-Banc in favor of Petitioners (Judges Raymond Pace Alexander, Charles L. Guerin, and Francis Shunk Brown, President Judge) filed October 4, 1967 and not yet officially reported because of its length (pages 3486a through 3570a of Volume 13 of the Transcript of Record) is also set forth in Appendix B separately printed and bound, pages 85 to 142.

C. The Decree Nisi by Hon. Raymond Pace Alexander, the Chancellor, entered in the Common Pleas Court, December 16, 1966 (Transcript of Record, page 3270a) is herein set forth in Appendix C, *infra*, page 141.

D. The Final Decree of the Lower Court, in favor of the Petitioners, dated October 4, 1967 and consisting of a one page *prolegomenon* and one page designated as Final Decree (Transcript, pages 3569a and 3570a), signed by the Chancellor in Equity, Raymond Pace Alexander, and by Judge Charles L. Guerin and the Hon. Francis Shunk Brown, President Judge* is set forth in Appendix D, pages 141 to 142.

---

* These are well known, highly respected and learned Judges, now reaching or attaining status of "Senior Judges."

E. The Opinion of the Supreme Court of Pennsylvania, written by Mr. Justice Eagen, dated November 11, 1969 (Justice Roberts dissenting, and Justice Musmanno *not* voting, having died before the Opinion) is reported officially in 436 Pa. 222, and is set forth in Appendix E, pages 143 to 159.

F. The action of the Supreme Court of Pennsylvania under its aforesaid Opinion, reversing and remanding the case, is set forth in Appendix F; it is printed on page 160.

G. The Opinion and Final Judgment on Remand, dated February 16, 1970, by Judge Alexander is entitled "Memorandum of the Court of Common Pleas of Philadelphia. Upon Remand from the Supreme Court of Pennsylvania, and Final Judgment," and is copied in Appendix G, pages 161 to 166.

H. An Order afterwards made, entitled "Memorandum and Order" signed by Judge Alexander on 27 February 1970, is set forth in Appendix H, pages 166 to 167.

I. An Oral modification made of that Order expressed immediately thereafter, cannot be printed, since it was oral; it limited the meaning of "property" of St. Michael's Church, amended the time, place and directives of the "Memorandum and Order."

Since several (three), Petitions and Rules were filed after January 12, 1970 but *without* action of the Lower Court, there is printed herewith as Appendix I, only the "Exceptions" filed by Petitioners; those "Exceptions" appear on page 168.

JURISDICTION.

Jurisdiction of this esteemed Court is invoked under Section 1257 (3), of Title 28, United States Code.

The Opinion of the Supreme Court reversing the Lower Court was rendered November 11, 1969. Timely application was filed for re-hearing on the Opinion and Order of Remand; the re-hearing was denied January 12, 1970.

On April 3, 1970, by Order of Justice William J. Brennan, Jr., an Order Extending the time to file this Petition for Writ of Certiorari was granted, extending the time to and including June 11, 1970.

QUESTIONS PRESENTED.

I. Does not the selection of clergy by a parish, made freely and with approval of *all* hierarchies involved, have Constitutional protection beyond attacks by intransigent dissidents who have also claimed they are not subject to *any* hierarchy or Superior Church authority, and beyond Civil Court interference where no improper methods of choice are proven?

II. May Civil Court decisions change religious obligations of a Priest-Rector, and pervert the hierarchical loyalty of parish trustees to an abandonment of ecclesiastically established obligations; and may a Civil Court decree that Church members, and corporate officers elected by them are to disobey convictions of conscience, and obligations under the corporate Charter and Civil By-Laws as understood, ruled and acted on by the hierarchy, without running afoul of Amendments I and XIV of the U. S. Constitution;

and do not Civil Court decisions ignoring ecclesiastical polity and Order violate Amendment I, and Amendment XIV, Section 1, of the U. S. Constitution; and do not actions of a Civil Court replacing a permanent Rector's obligations to Ecclesiastical Superiors by "switching" obligations to another hierarchy violate principles of separation of Church and State?

III. Did not the Pennsylvania Courts violate the Constitution by ordering differently, matters established by hierarchical decrees, particularly as to obligations owed by Metropolia Diocesan Bishops, who acted on the recommendation, release and consent of the Patriarchate of Moscow by its Exarch, the highest ecclesiastical judicatory of the Patriarchate, to which St. Michael's Parish (*including* the respondents) had carried the matter?

IV. Did not the Appeals Court misconstrue and misapply the *Hull* decision, and fail to give due process to parishioners and parish, and contravene the First and Fourteenth Amendments by *limiting* "neutral principles" *and* the consideration of Civil Courts to the single item of the 1915 Charter—particularly when such a delimitation abrogates and evades decisions of the highest ecclesiastical judicatories, and the long established rights of parishioners?

CONSTITUTIONAL PROVISIONS.

Petitioners contend that the Supreme Court of Pennsylvania (and the Common Pleas Court seeking to abide by the decision of the Justices), have violated Amendment I, and Section 1 of Amendment XIV of the U. S. Constitution.

Amendment I provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Section 1 of Amendment XIV provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioners also contend that as applied and interpreted by the Pa. Supreme Court, the Pa. "Lay Control of Church Property Act" (the Act of April 26, 1855, P. L. 328, as amended June 20, 1935, P. L. 353 §1), is unconstitutional; that Act reads as follows:

Church property to be subject to control of officers or authorities thereof; validation of certain charters

Whensoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages or corporate requirements of such church, con-

gregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated: . . . Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted; any other or different provision therein notwithstanding. 1855, April 26, P. L. 328, §7; 1187, June 2, P. L. 298, §1; 1907, May 1, P. L. 132, §1; 1913, May 20, P. L. 242, §1; 1935, June 20, P. L. 353, §1.

STATEMENT OF THE CASE.

In the spring and summer of 1955, the Exarchate of the Patriarchate of Moscow (Russian Orthodox Church) which had appointed clergy to St. Michael and Archangel Russian Orthodox Greek Catholic Parish of Philadelphia (hereafter called St. Michael's), only since 1950, was unable to provide any priest for the parish.

It recommended Very Reverend Alexander Fedoronko of the Russian Orthodox Greek Catholic Church of North America (in brief, known as the Metropolia); the Primate of that Church, His Eminence Metropolitan Leonty there-

upon, as requested by the authorized Parish Council, duly appointed Father Fedoronko as the permanent pastor of St. Michael's.

The appointing document, which also accepted the parish "into the jurisdiction of the Russian Orthodox Greek Catholic Church of North America," was Exhibit PC-64, Transcript page 3601a (Finding of Fact 81, Appendix A, page 56, and Conclusion of Law 13, pages 105-6).

The Minutes and Records of the general meetings of the congregation duly recorded the Patriarchate's Recommendation, and the Resolutions and Motions authorizing the elected Parish Council to seek Fr. Fedoronko's appointment; also the conditions thereof (Exhibit PC-72, Transcript page 3602a) that the parish would be accepted "into the Metropolitanate"—all of which actions of the parish were consented to by the Patriarchate (see Opinion of the Pa. Supreme Court, Appendix E, beginning page 143)—were found as facts by the Trial Court—and the Findings of Fact not disturbed on Appeal.

The Exarchal clergy withdrew from the parish that summer, and St. Michael's resumed its prior long-standing ecclesiastical affiliation with the Metropolia. It prospered and grew from about 250 members in 1955 to 622 voting members in 1962.

The permanent priest-Rector was fully qualified under the 1915 Charter and 1925 By-Laws (Appendix B, Finding 99, page 112). The selection-of-clergy provisions of the Corporate By-Laws are Articles 16 and 19 (Transcript, 3642a):

> Article 16. A rector is chosen by the general parochial meeting, which is convoked for this purpose, and the choice shall be confirmed by the lawful bishop under whose jurisdiction the parish is.
>
> A rector can also be appointed by the bishop with the consent of the parishioners by the majority of the

members present at the meeting especially convoked for this purpose.

Article 19. The rector shall be under the guidance and control of the diocesan bishop, whose jurisdiction is being recognized by the parish, and cannot be moved from his office without an important reason.

The *right* to participate in the selection of the Rector is granted to members of the parish by Article 11 (page 3641a of the Transcript):

Article 11. The full members are the owners of the parochial property and have the right to participate in all parochial meetings as: annual, semi-annual, and special, and can be elected members of the Parish Committee.

The sole provisions for the clergyman's removal are spelled out in Article 20 (3642a). It was not contended below that he was removable thereunder when, in 1963 a group of 16 disgruntled parishioners (Respondents) declared themselves "officers" and unsuccessfully sought his replacement through the Diocesan Bishop.

The Respondents claim to office and to act "for the parish" was based on a rump "parochial" meeting held January 1963; but the Lower Court enjoined them from interfering with the February 3, 1963 annual parish meeting, declared *their* meeting null and void, affirmed the Petitioners (who were hierarchically confirmed) as officers.

Respondents' request to be confirmed as "officers" was declined by the Court, and that decision became final.

This Adjudication (Transcript, 3610a et seq.) followed many days of testimony before the Chancellor throughout 1963. During all of that year, Respondents asserted and claimed that they and St. Michael's were under *no* hierarchy, but were congregational, independent, a "law unto

itself," and "an independent or autonomous" Church (Finding of Fact 96, Appendix B, page 102 infra).

Their claims of "independence" and "beholden to no hierarchy" had been asserted in their Counterclaim and Answer on petitioners' injunctive proceedings.

They amended their Counterclaim in 1964; the several ensuing years of litigation (over 5,000 pages of recorded testimony, and about an equal number of pages of Exhibits) had to do with their Amended Counterclaim which included a request for a Ruling that St. Michael's *was* within the Patriarchal hierarchy.

The hierarchs were not parties, nor litigants.

The hierarchies, indeed, had peacefully, in 1955, acted jointly in the appointment of Fr. Fedoronko, the principal Defendant in the Amended Counterclaim, as the Rector.

The Patriarchate gave its consent (Conclusion of Law 10, Appendix B, page 104), accepted his qualifications under the Charter for Rectorship, and "his candidacy was approved in advance of any appointment" (Finding of Fact 99, Appendix B, pages 112-113).

This action established the appointing Bishop (Metropolia) as the one "in whose constant care and within whose concern the faithful are, and which said Bishop is represented on the local level by the priest of the parish whose representative he is" (Finding of Fact 98, Appendix B, page 112).

Thus, since 1955, St. Michael's was *returned* to the jurisdiction with which it had earlier been affiliated, notably from 1935 under Bishop Adam (page 91, Appendix B, and see pages 95 and 96) who had appointed, under the same By-Laws, Rev. George Cucura (Finding of Fact 54, page 100) who remained within the Metropolia until December, 1949 (page 98, Finding of Fact 45, Appendix B).

Within this period, in 1948, the highest ecclesiastical judicatory, Bishop Macarius of the Patriarchate, declined

to be involved in St. Michael's because of Fr. Cucura's affiliation, and the recognized, continuous jurisdiction of and by the Metropolia Diocesans (page 92, and page 127, Appendix B).

Consistent with the actions of the highest judicatories of *both* hierarchies (Patriarchal and Metropolia) Conclusions of Law 19 and 20 were entered (Appendix B, page 109): that the Rector served within Charter and By-Law purposes; that St. Michael's was within the Metropolia Diocese as approved by the Patriarchate; and that the parish was affiliated with the Metropolia.

The assignment of the Metropolia clergyman "was accomplished after the release of the parish by the Patriarchal Exarchate" (page 125, Appendix B); and, since 1955, the parish "had been accepted into the jurisdiction of the American Metropolia, by action confirmed in a letter of October 31, 1955 to the president of the parish council" (Appendix B, page 125). Further, being a "decision of the highest judicial authority of the Patriarchal Exarchate . . . (it was) a decision which should not be subject to the review of this Court" (page 126, Appendix B).

The Court-en-banc therefore ruled (citing *Watson v. Jones*, 13 Wallace 679, 727) that it was "bound to follow the decision of the Patriarchal Exarchate of 1955, which granted St. Michael's Parish the right in so far as the Patriarchal Exarchate was concerned, of obtaining a permanent priest . . ." and becoming "affiliated jurisdictionally" with the Metropolia (page 126, Appendix B).

Also, the Lower Court held that the parish meeting of May 7, 1967 at which *both* "groups" of parishioner-litigants voted, was consistent with the Patriarchal and Metropolia actions of 1955; and agreed with the selection of clergy by the parish in view of hierarchical decisions, as "no improper methods of choice" were proven (pages 127 and 128).

On purely civil and neutral principles, the Lower Court

found that the 1967 meeting was in accord with the Charter and the By-Laws of the parish corporation (Appendix B, pages 134 and 135).

As for our corporate officers and trustees, their elections were conducted at annual parish meetings allowed by the Non-Profit Corporation Law under provisions of By-Law Articles 26 through 28 (Transcript, 3644a). The Court found Petitioners and their successors duly elected on neutral principles.

The Lower Court thus sustained the freely selected clergyman Fr. Fedoronko, and the equally freely (by By-Law required secret ballots) elected Church Warden and other officers—declining to "confirm" the Respondents into any office, thus holding inviolate the agreements and joint actions of the hierarchies.

Contending that the *Kedroff* and *Kreshik* cases had been misapplied, and Articles I and XIV of the U. S. Constitution violated by the commanding Opinion of the Court-en-banc, the Respondents appealed to the Pa. Supreme Court; the case was argued in November 1968, and an Opinion, adverse to your Petitioners, was filed November 11, 1969. Our timely Petition for re-argument and re-hearing was refused January 12, 1970.

In the meanwhile, the *Hull* case was decided, but of course had not been briefed by either side, nor argued before the Appeals Court.

The Pa. Supreme Court, in effect, held that *no* neutral principles should have been considered (nor *anything* heard or considered by the Lower Court) *except* the one single recorded document, the Charter of 1915 (Appendix E, page 159):

> "We thus conclude that the Lower Court erred in going beyond the 1915 Charter to resolve the instant dispute."

They held to this "limitation" *despite* the evidence and uncontested Findings that both hierarchies had rendered ecclesiastical decisions, and taken extensive actions under the Charter and the By-Laws, and had intimately affected the administrative life of the parish which had fully *accepted* and lived by these ecclesiastical determinations of the hierarchies. To both hierarchies, this parish had always paid respect, had *accepted* them equally; Exhibit PC-1, signed by *all* past Wardens (drawn by their counsel) so affirmed. So too the life and history of St. Michael's.

In consequence of the reversal, and remand to the Lower Court by the Pa. Supreme Court, the Chancellor entered a "Final Judgment"—without any hearings—on February 16, 1970 (see Appendix G, beginning page 161); and added to that an "Order" (Appendix H, beginning page 166).

That is the present stage as to Orders, in the proceedings in the Court of First Instance. In the Appellate Court, no re-hearing of the November 11, 1969 Decision is any longer permitted; at this stage, your Petitioners, having filed an Appeal on March 26, 1970 from the February 16 and 27th judgments of the Chancellor will be permitted to argue merely whether those Orders are proper within the November 11, 1969, Decision—but not the issues raised in this Petition for Certiorari.

Factually: Petitioners are at the point where they have already transferred the Church premises and other properties of St. Michael's to the Respondents; and can expect further adverse Orders of the Chancellor who is conducting hearings requested by Respondents who seek further Orders and Judgments. This course, if permitted, will bring further disturbances to the right of the parish and the congregation to the free exercise of religion, including the proper use of religious articles and property, and the ministrations and care of the freely selected clergy.

PRESENTATION OF THE FEDERAL QUESTION.

The Federal questions in this case were first asserted by the respondents during trial in briefs and oral arguments before the Chancellor and then the Court-en-banc of the Trial Court, particularly with respect to the binding applicability of decisions regarding the hierarchies and principles in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U. S. 190 (1960), and *Watson v. Jones*, 80 U. S. (13 Wall) 679, (1871).

The federal questions citing Amendments I and XIV were also asserted in and by Respondents Briefs before the Pa. Supreme Court to which they had appealed from the adverse, unanimous decision of the Chancellor and the two Judges who had participated with him en-banc.

After Your Honorable Court decided *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 in 1969, the Respondents filed their Petition before the Supreme Court calling attention to that decision and urging federal questions anew under it, the oral argument in appeal having taken place in Philadelphia on November 12, 1968 before the enunciation of the principles of the *Hull* case.

REASONS FOR GRANTING THE WRIT.

1. The Pa. Supreme Court has denied to litigants within its jurisdiction the rights granted to citizens under our Constitution and the decisions of Your Honorable Court, to "freedom to select clergy, where no improper methods of choice are proven": *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 116 (1952).

2. By the decision to which certiorari is sought, the Pa. Supreme Court has violated the well-established principle of law which precludes civil courts from reviewing or ignoring decisions made by duly constituted ecclesiastical authorities, and has ignored the lines between the responsibilities of church and state for the disposition of use of property. "Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion": *Kedroff*, supra, at pages 120-121. See also *Watson v. Jones*, 13 Wallace (U. S. S. C. A.) 679, 727 (1871).

3. Equally as by peccant statute, so may action of the judiciary be violative of first amendment rights as a prohibited exercise of power: *Kreshik v. St. Nicholas Cathedral*, 367 U. S. 190 (1960). In this case, the civil courts below have trenched where the Constitution and Your Honorable Court have declared they may not interfere.

4. As is well known to Your Honorable Court, the limits of action by Lower Courts have variously been determined in the state courts; since the recent case of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 (1969), further clarification of the principles of law involved is needed, particularly since state courts have failed to grasp the meaning and the application of permitted "neutral principles of law" on which neutral principles a proper review of the instant case could have been had, and the lower court sustained. Moreover, the Court below delimited the neutral principle approach so as to *exclude* important, non-doctrinal factors important to a fair, equitable decision within due process of law.

5. As applied, the "Lay Control of Property Act" of Pennsylvania deprives parishioners and clergy of due process and equal protection of the laws.

6. The questions raised by the decision of the Appeals Court below transcend the complaints and the rankling injustices felt by Petitioners. There are potentials of danger to everyone in allowing unchallenged the interference with ecclesiastical decisions made 15 years ago, and acted upon by Petitioners in good faith and conscience.

7. On the very same day that the within complained of Opinion was entered delimiting court action to one single, solitary item of evidence (the Charter whose provisions were the subject of a different ecclesiastical decision and action) the Pa. Supreme Court also decided *St. John Chrysostom Greek Catholic Church of Pittsburgh, v. Elko,* 436 Pa. 243 (1969) where despite the incorporation of the congregation under the term "autonomic" Church, the Supreme Court did *not* limit itself to the Charter, but reviewed many other facts and history *including the rituals and practices* of that Church, and concluded that it was not autonomous or autonomic, but was united with the hierarchy of the Roman Catholic Church.

8. In view of the recently publicized action (April, 1970), of the Patriarchate *recognizing* the Metropolia hierarchy and its church as the proper continuity of the Orthodox Church in America,* new light has been thrown onto the "jurisdiction" of the Patriarchate and claims made as if there was actual hostility of an ecclesiastical nature between the hierarchy. The grant of this Writ will no doubt preclude much further litigation on Church matters.

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* Not part of the Record, as it followed the Opinion.

CONCLUSION.

Since the federal questions are substantial; the church and hierarchy involved one which has had the attention of this and many other Courts through many years since 1917; and since the proscriptions of the Pa. Supreme Court would leave unprotected the constitutional rights of many faithful Orthodox believers, it is respectfully submitted that this Writ should be granted.

Respectfully submitted,

IVAN MICHAELSON CZAP,
Attorney for Petitioners.

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IN THE

Supreme Court of the United States

April Term, 1970.

No. 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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INDEX

	PAGE
I. Counter Statement of the Case	1
II. Argument Contra Grant of Writ of Certiorari	4
A. The decision of the Pennsylvania Supreme Court rests on an independent and adequate ground of State Law	4
B. Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 89 S. Ct. 601 (1969) and The Maryland and Virginia Eldership of the Churches of God et al. v. The Church of God at Sharpsburg, Inc., et al., 90 S. Ct. 499 (1970), cases preclude review by this Court of the decision below	8
C. No federal question is involved here	9
D. The petition does not conform to the requirements of the rules of this court governing the petition for certiorari	11
E. Petitioners did not properly raise a constitutional question in the court below, in the pleadings, or otherwise	12
III. Inaccuracies in Petitioners' Statement of the Case	12

TABLE OF CITATIONS

CASES:

Appeal of Schnorr, 67 Pa. 138	9
Dixon v. Duffy, 342 U. S. 33	7
Durley v. Mayo, 351 U. S. 277	7
Jankovich v. Indiana Toll Rd. Commission, 379 U. S. 487	7, 8

PAGE

Kedroff v. St. Nicholas Cathedral, 344 U. S. 94 ..... 1, 5, 7

Kreshik v. St. Nicholas Cathedral, 363 U. S. 190 7

Lynch v. New York, 293 U. S. 52 7

Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 89 S. Ct. 601 (1969) 7, 8

Radio Station WOW v. Johnson, 326 U. S. 129 7

The Maryland and Virginia Eldership of the Churches of God et al. v. The Church of God at Sharpsburg, Inc., et al., 90 S. Ct. 499 (1970) 8

STATUTE:

"Lay Control of Church Property Act" of 1855 (Act of April 26, 1855, P. L. 327, Sec. 7, as amended) 3, 7, 9

RULE:

Rule 23 (e), (f) and (h) 11, 12

I. COUNTER STATEMENT OF THE CASE.

(The designation "R.V." herein refers to the Record Volume in the original record printed for the Pennsylvania Supreme Court. Thus, "R.V. 10-2660a" means, Record Volume 10, page 2660a. The designation, "A", refers to Petitioners' Appendix printed for this Honorable Court; thus "A-143" means page 143 of Petitioners' Appendix.)

The facts concerning the founding in 1909 and the incorporation in 1915 of St. Michael's Church, are essential history of this case, and although made basic findings by the Lower as well as Pennsylvania Supreme Court, are not covered in Petitioners' "Statement of the Case". We supply this omission by our Counter Statement.

First, briefly, the relevant context of Russian Church history into which St. Michael's Church was born in 1909.

1. The Russian Orthodox Church is a hierarchical church, and its supreme authority was, prior to 1918 vested in a Holy Synod, and thereafter in a Patriarch.*

2. The Russian Church is a missionary church, and by 1918 there were about 300 Russian churches in the American Diocese of the Church, which were a constituent and organic part of the Church at large.*

3. Due to the difficulties encountered by the Russian Church under the Soviets, a group of Russian churches in this country, a fraction of the total number, about 115 out of 300 (R.V. 3-732a), at a convention in Detroit in April 1924, organized themselves, as their resolutions put it, "temporarily", as a self-governing church until the election of a new Patriarch. This group called itself Metropolia.

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* This finding, as well as those in paragraphs 2, 3, and 5, are virtually identical with those in **Kedroff v. St. Nicholas Cathedral**, 344 U. S. 94, which was a confrontation between the Patriarchate and Metropolia, each of whom claimed control of the Church there in question. The Court ruled in favor of the Patriarchate then. The controlling facts require a like ruling here.

4. Metropolia, organized in 1924, was not yet in existence when St. Michael's Church was founded in 1909 and incorporated in 1915. St. Michael's was NOT one of the churches present at Metropolia's organization in 1924, and did not otherwise participate therein (R.V. 10-2660a). In fact, St. Michael's rejected Metropolia and expressed specific adherence to the Patriarch (R.V. 14-3634a).

5. The Patriarchate condemned the organization of Metropolia as uncanonical (R.V. 14-3729a; R.V. 10-2878a; R.V. 3-761a and 763a; R.V. 3-863a and 864a).

6. St. Michael's Church was founded in 1909 in Philadelphia, Penna., as a Russian Orthodox parish and was subject to the authority of the Holy Synod. The Trial Judge made this a Finding of Fact (A-40, Finding of Fact No. 15) as well as a Conclusion of Law (A-27, Conclusion of Law No. 1). The Court en Banc so held (A-90): "From the time of its founding in 1909 to 1917, the supreme hierarchical authority of the church was the Holy Synod" and at A-96: "From the time of the founding of the parish in 1909 to 1917, the parish was clearly under the sole hierarchical jurisdiction of the church then existing in the United States, the Diocese of the Aleutian Islands and North America, of the Russian Orthodox Greek Catholic Church." Likewise, the Pennsylvania Supreme Court (A-159).

7. In 1915, St. Michael's was incorporated and its charter specifically provided that it is part of and subject to the Diocese of the Russian Church which was then governed by the Holy Synod. The Trial Judge so held (A-38, 39; Findings of Fact Nos. 9, 10, 11, 12, 13, 14, 15 and A-77, 78, Conclusions of Law Nos. 2, 3, 4). The Court en Banc so held (A-90, supra) as did the Pennsylvania Supreme Court (A-159).

8. Article II, Section 2 of St. Michael's corporate charter obtained in 1915 provides (R.V. 14-3736a):

> "This Church acknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North America Diocese, and as such it accedes to, recognizes and accepts the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly."
>
> "Section 3. Any members of this Church or Corporation who shall disclaim or refuse conformity to said authority shall cease to be a member of this Corporation and shall not be elected or vote at the election of Trustees or other Officers or exercise any office or function in, concerning or connected with said Church or Corporation."

9. The corporate charter further provides that all real and personal property owned by the corporation shall be held subject to control of the lay members having controlling power according to the laws of Pennsylvania, and that such control shall be exercised:

> ". . . in accordance with and be subject to the Rules and Regulations, usages, canons, discipline and requirements of the Russian Orthodox Greek Catholic Church of the North America Diocese, to which this Church is hereby declared to belong." (Article V, Section 2, corporate charter, supra.)

10. The Pennsylvania "Lay Control of Church Property Act" of 1855, (Act of April 26, 1855, P. L. 327, Sec. 7, as amended) provides for the denominational control of church property held by corporations, and was held to be applicable and controlling in this case by the Trial Court

(A-39, Finding of Fact No. 14), was adopted by the Court en Banc and by the Pennsylvania Supreme Court (A-159).

11. In 1925, St. Michael's Church adopted a by-law which provided that the Church "shall be under the ecclesiastical jurisdiction of the Russian Orthodox Bishop who is selected by the parish". The Trial Court held that, even though by original intent of its founders, as well as by specific provision of its charter of incorporation, as well as by the "Lay Control of Church Property Act", and canon law, St. Michael's was within and subject to the Patriarchate jurisdiction, that, nonetheless, the parish could by virtue of the 1925 by-law, leave the Patriarchate and, by majority vote, join any Orthodox Jurisdiction, including Metropolia. (Trial Judge's Conclusion of Law No. 17, found at A-83).

The intermediate Court en Banc affirmed.

However, the Pennsylvania Supreme Court reversed this ruling, held the by-law to be void and violative of the specific provisions of St. Michael's Charter, violative of the above "Lay Control" statute, and the Supreme Court directed judgment in favor of defendants.

II. ARGUMENT CONTRA GRANT OF WRIT OF CERTIORARI.

A. The decision of the Pennsylvania Supreme Court rests on an independent and adequate ground of State Law.

Let us now analyze the Pennsylvania Supreme Court decision which Petitioners seek to review.

In the very first sentence the opinion formulates the issue of fact in the case, viz., whether St. Michael's is part of the Patriarchate or Metropolia:

> "In this action in equity, the basic issue is whether St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia (St. Michael's) is subject to the Patriarchal jurisdiction of the Moscow based general Russian Orthodox Church, officially known as 'The Russian Orthodox Greek Catholic Church' (Russian Orthodox Church), or is it within the jurisdiction of 'The Russian Orthodox Church of America' commonly known as the 'Metropolia'. Upon the determination of the proper jurisdiction hinges certain property rights" (A-145).

The opinion, after stating that the history of the Russian Church in the Soviet Union and in this country "is not an issue here". (A-145) proceeds, by way of background, to recite its history, which is practically identical with that recounted in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94.

Turning to St. Michael's, the Court said:

> "St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia was founded in 1909 and incorporated in 1915. The corporate charter quite positively reveals that St. Michael's was founded as a constituent part of the Russian Orthodox Church. Article II, Section 2 of the Charter provides as follows: 'This Church acknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North America Diocese and as such, it accedes to, recognizes and accepts, the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly' " (A-148).

The Court then refers to the holding of the Trial Court and the Court en Banc, that the by-law of 1925 authorized St. Michael's, by a majority vote of its parishioners, to

leave the Patriarchate and to join Metropolia and specifically holds this to be reversible error, stating:

> "The Chancellor in the court below, after extended hearings, entered an adjudication and a decree nisi ruling that as of that date St. Michael's was within and under the ecclesiastical jurisdiction of the Patriarch of the Russian Orthodox Church, but that it could, by a majority vote of its parishioners, join the Metropolia" (A-145).
>
> "Given such a structure, we find untenable the Chancellor's conclusion that the 1925 by-law allowing St. Michael's to choose by majority vote its hierarchical allegiance, is consistent with its corporate charter. The charter assured St. Michael's relationship within a hierarchical organization; the by-law in effect, sought to make St. Michael's congregational in form" (A-158).

The Court then summarized the essence of its holding as follows:

> "We thus conclude that the lower court erred in going beyond the 1915 charter to resolve the instant dispute. The charter quite clearly placed St. Michael's within the hierarchical structure of the Russian Orthodox Church under the Holy Synod. The succession from the Holy Synod to the Patriarchate is recognized as canonical by the Russian Orthodox Church and accordingly must be regarded as such by the civil courts under *Watson* supra, and *Presbyterian Church,* supra. The lower court has shown no authority for its conclusion that a dedication of a local congregation to a hierarchical general church organization is binding on the local church only until some other hierarchy, administratively and judicially independent of the first but embracing the same religious faith and precepts, comes along. That being so, the decrees of the lower

court are reversed and the record is remanded for action consistent with this opinion" (A-159).

Thus, by original intent of its founders, and by the specific provisions of its charter, as well as by the express terms of the above Pennsylvania statute, St. Michael's was held to be part of the Church at large, first under the Holy Synod and after 1918, the Patriarchate, and that the by-law of 1925 was ineffectual to alter this charter and statutory commitment.

The Court also discussed the constitutional issues raised in *Kedroff*, supra, and *Kreshik v. St. Nicholas Cathedral*, 363 U. S. 190, and *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 89 S. Ct. 601 (1969), but clearly the *specific* holding was based on state law, namely, that under the corporate charter and the "Lay Control" statute, St. Michael's was part of the Patriarchate and the by-law of 1925 could not alter that status.

The decision thus rests squarely on an adequate and independent basis of state law and in such case, this Court has uniformly denied certiorari on the ground of lack of jurisdiction. *Radio Station WOW v. Johnson*, 326 U. S. 129; *Dixon v. Duffy*, 342 U. S. 33; *Jankovich v. Indiana Toll Rd. Commission*, 379 U. S. 487; *Lynch v. New York*, 293 U. S. 52; *Durley v. Mayo*, 351 U. S. 277. A representative statement of this view is offered from *Jankovich*, supra:

> "Respondent suggests, however, that we are without jurisdiction to review the judgment of the Supreme Court of Indiana because that judgment was based on an independent and adequate state ground. It is undoubtedly
>
> 'the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of

the federal ground and adequate to support the judgment.' *Fox Film Corp. v. Muller*, 296 U. S. 207, 210. *Cramp v. Board of Public Instruction*, 368 U. S. 278, 281.

As we have concluded that respondent is correct in its contention that the judgment sought to be reviewed is supported by an independent and adequate state ground, we dismiss the writ of certiorari as improvidently granted" (at 379 U. S. 489).

B. Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 89 S. Ct. 601 (1969) and The Maryland and Virginia Eldership of the Churches of God et al. v. The Church of God at Sharpsburg, Inc., et al., 90 S. Ct. 499 (1970), cases preclude review by this Court of the decision below.

Enforcing the views we respectfully present hereinabove, are the above cited recent cases, which hold that issues as to the control and use of church property should be decided on "neutral principles" of law, that is to say, by the provisions in deeds, terms of a corporate charter, local statutes governing the holding and transfer of titles, etc., with a minimum of consideration of ecclesiastical issues. Thus, the Court in the *Maryland and Virginia Eldership* case, supra, said:

"In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General El-

dership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969). Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellee's motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question."

The case at bar was decided on such "neutral principles": the original intent of the founders, the provisions of the corporate charter, the terms of the local Pennsylvania statute, and the effect under state law of a corporate by-law. The above cases preclude granting the certiorari requested.

C. No federal question is involved here.

We respectfully submit that the "Questions Presented" set forth in pages 4-5 of the Petition, are baseless and have no relation to the opinion of the Pennsylvania Supreme Court.

From the balance of the Petition, we may perhaps discern the following two claims:

(a) That the Pennsylvania Lay Control of Church Property Act "deprives parishioners and clergy of due process and equal protection of the laws". (Petition, page 16.) Petitioners offer no discussion or analysis to support their assertion that this statute is unconstitutional. The Statute is over 100 years old, has never been questioned as far as we know, and merely codifies the common law (*Appeal of Schnorr*, 67 Pa. 138, portion quoted at A-61, 62).

(b) A second possible claim that might be in the Petition, is that the employment by St. Michael's in 1955 of Fedoronko as its priest, with the consent of the local Patriarchal bishop, somehow operated as an irretrievable "transfer" of the parish out of the Patriarchate into the Metropolia. But both the trial court and the Supreme Court rejected this claim, and that rejection is based on conclusive testimony in the record which Fedoronko (who did not take the stand) did not contradict.

The fact is that, in 1955, owing to a shortage of Patriarchal priests, on a "regular" and not on a temporary basis (R. V. 8-2109a), and in order not to leave St. Michael's without any spiritual administration, Makary, the local Patriarchal Bishop, consented that the church engage Fedoronko who was then with Metropolia. But this employment was on the express condition that the church remain Patriarchal (R. V. 8-2119a to 2121a; R. V. 10-2554a) and Fedoronko agreed (R. V. 8-2130a to 2144a). The church told Leonty it refused to join Metropolia but would remain Patriarchal (R. V. 8-2158a; 2232a). The testimony was that we "get a priest anywhere we could but without leaving the Patriarchal jurisdiction" (R. V. 11-2932a). Karnick testified that there was no question of another jurisdiction, they only wanted a priest (R. V. 8-2119a), that at no time was there any change of jurisdiction (R. V. 8-2120a) but the church was to remain Patriarchal (R. V. 8-2137a, 2144a). The matter was summarized in the statement that "the parish's jurisdiction was not being changed but they were seeking a man—not a jurisdiction" (R. V. 9-2318a to 2319a), that the intent was "to secure a man, not a jurisdiction, but to secure a man" (R. V. 9-2325a).

The Trial Judge found and, on the evidence this finding is inexorable, that in seeking a priest from one of the non-Patriarchal jurisdictions, the parishioners of St. Michael's

Church DID NOT CONTEMPLATE A FORMAL CHANGE OF HIERARCHICAL JURISDICTION OF THE CHURCH (R. V. 12-3242a, Finding of Fact No. 78) and that the employment of Fedoronko was not conditioned on the church's joining Metropolia (R. V. 12-3244a, Finding of Fact No. 82).

Leonty's purported "acceptance" of St. Michael's into Metropolia and assigning Fedoronko as a "permanent" priest was also rejected by the trial court and the Pennsylvania Supreme Court (A-81, Conclusion of Law No. 10; A-152). It is a familiar gambit to "accept" what was never offered.

D. The petition does not conform to the requirements of the rules of this court governing the petition for certiorari.

It is difficult to discern any coherent or specific meaning in the generalities of the Petition. Rule 23(f) requires that the Petitioner *specify* the stage at which the federal question was first raised, the manner, the pleading, the lower court's ruling thereon, with *specific reference to* the lower court record. Petitioners' "Presentation" on page 14 of the Petition reveals a total lack of compliance with the specificity required by the Rule. Petitioners' "Statement of the Case" omits any mention of the founding in 1909 and incorporation in 1915 of St. Michael's. Petitioners' "Reasons" on page 14 are neither concise nor direct. Thus, serious lack of compliance with (e), (f) and (h) of Rule 23, which also provides in Section 4:

> "The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his Petition."

We respectfully submit that the Petition herein falls squarely within the condemnation of this Rule.

E. Petitioners did not properly raise a constitutional question in the court below, in the pleadings, or otherwise.

Indeed, in Petitioners' brief filed with the Pennsylvania Supreme Court, their present counsel stated:

> "The case involved issues of fact turning on credibility." (Page 7 of Petitioners' brief in the Pennsylvania Supreme Court.)

And on page 51 of their brief in the Pennsylvania Supreme Court, under a heavy-lined heading entitled, "The Alleged 'Constitutional' Question", Petitioners state:

> "There is no federal constitutional question involved in this litigation."

In this instance, Petitioners' counsel should be taken at his word.

III. INACCURACIES IN PETITIONERS' STATEMENT OF THE CASE.

We forbear discussion of a number of misstatements of fact in the Petition, except the following:

1. Total omission of the facts concerning founding in 1909 and incorporation in 1915 of St. Michael's Church.

2. Petitioners' statement on page 8 that St. Michael's had a "long standing affiliation with Metropolia" prior to 1955

is completely false. The accurate fact is that St. Michael's remained Patriarchal from 1909 onwards in its clergy, in its expressions of loyalty to the Patriarch, and in its repudiation of Metropolia bishops and in the total absence in the minutes from 1909 until approximately 1962, of even the word, "Metropolia". The proof on these points consists of ancient parish minutes, and the testimony of octogenarian founders of the parish, and parish officers covering the period from 1909 to 1963 when the lawsuit was begun by Fedoronko. *All of this testimony was adduced by Respondents' 12 lay witnesses;* not a single witness was put on the stand by Petitioners, on the jurisdictional issue, other than Fedoronko's wife, whose knowledge of the parish began in 1955, and she conceded that she and her husband knew that in coming to St. Michael's in 1955, they were coming to a Patriarchal parish, R. V. 11-2946a and R. V. 12-3015a. These Exhibits and testimony are found in the Record Volumes at: Vol. 14-3628a; Vol. 14-3631a; Vol. 14-3634a; Vol. 14-3636a; Vol. 14-3663a; Vol. 14-3664a; Vol. 14-3665a; Vol. 14-3666a; Vol. 14-3667a; Vol. 2-547a; Vol. 12-3268a of Law No. 15; Andrew Lahovin's testimony covering 1909 through 1939, beginning at Vol. 3-604a, 4-1013a; Rev. W. Sidorsky for 10 years a deacon under Bishop Adam, Vol. 5-1263a; J. Karnick, covering the period from 1953 to 1963, Vol. 6-1700a and 9-2273a; J. Harwan covered the period from 1962-1964, Vol. 9-2456a.

3. Petitioners' statement on page 13 that they have "transferred the church premises and other property of St. Michael's to respondents" is not accurate. They did transfer the church premises and some (but not all) religious articles, but they did *not* surrender the church rectory (valued in excess of $75,000.00), the church records from 1963 onwards, a large number of religious articles, some $200,000.00 in banks in the name of St. Michael's corporation.

4. Petitioners' counsel goes outside the record to refer to an alleged action of the Patriarchate in 1970 in "recognizing the Metropolia hierarchy and its church as the proper continuity of the Orthodox Church in America" (p. 16). This is misleading. The Patriarchate, as we have seen, had in 1934 and 1935 condemned the organization of Metropolia in 1924 as uncanonical. However, in April, 1970, the Patriarchate made its peace with Metropolia and agreed to confer canonicity and autocephaly on Metropolia, but the Patriarchate, in its agreement of grant, and in its written grant of autocephaly, specifically excluded the Patriarchal parishes from autocephaly; those Patriarchal parishes remain within and subject to, the Patriarchate. In the written grant of autocephaly, *St. Michael's parish* is specifically excluded (together with other Patriarchal parishes) from autocephaly and is specifically retained within and subject to, the Patriarchate.

It is respectfully submitted that for all the reasons above given the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN S. MANOS,
PHILIP ADLER,
Attorneys for Respondents.

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IN THE

Supreme Court of the United States

April Term, 1970.

No. 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

Petition for Rehearing

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Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

IN THE

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Respondents.

PETITION FOR REHEARING

Petitioners respectfully present their Petition for a rehearing and in support thereof show:

GROUNDS FOR REHEARING

As but limitedly suggested in the 8th Reason for granting the Writ set forth on page 16 of our Petition for Certiorari, after the Supreme Court of Pennsylvania rendered its Decision on 11 November 1969, and *since* the filing of our Petition for Certiorari, the Bishops Synod of the Russian Orthodox Greek Catholic Church of America (referred to as the *Metropolia*), formally received on May 18th, 1970 a document called a *Tomos* from the Patriarchate.

It was dated April 10, 1970. The same Bishops Synod on October 20, 1970, at St. Tikhons Monastery Church, South Canaan, Pennsylvania (as foreseen and approved in the *Tomos* and an earlier Agreement) proclaimed the Metropolia's autocephaly; that same Bishops Synod, and Church, now have had ceded to them, by the Patriarchate (with certain stipulated exceptions as to enumerated clergy, properties and parishes), exclusive "spiritual and temporal jurisdiction" in America without any question as to their continuous authority as a valid hierarchy.

In this way the true Orthodoxy of the Bishops of the Metropolia, including His Grace Archbishop Kiprian, Bishop of Philadelphia and Pennsylvania, the Diocesan in whose care and concern the parish of St. Michael's existed during the within litigation has been confirmed, and is beyond question.

Thus it has become clear that the Pennsylvania Supreme Court misconstrued not only the Patriarchate's hierarchical *release* and *consent* of the parish in 1955 by which St. Michael's received Very Reverend Alexander Federonko as

its priest—who by Orthodox Canons was the Representative on the parish of an Orthodox hierarch, but also makes clear that by ignoring *all* facts after the Charter of 1915—including the fact of release and *consent* of the hierarchy comprehended within that Charter, *to* the hierarchy now conceded to be the proper continuity of *that* Orthodox Church and hierarchy in America. The Court ignored valid decisions of the highest tribunals.

Thus, both *Gonzalez v. Archbishop*, 280 U. S. 1 (1929); and *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 (1969), have been misconstrued and misapplied.

So too, when Justice Eagen, writing for the Court, referred *only* to a 1962 oral statement of the pastor (page 152, Appendix) that St. Michael's was *within* the Metropolia, in failing to give attention to the 1955 *consent* and release by the Patriarchate (Conclusions of Law 10 and 11, page 104 Appendix, Finding of Fact 79, page 101 Appendix); or of Exhibit PC-64 (Transcript page 3601a, Finding of Fact 81, Conclusion of Law 13—Appendix pages 56, and 105-106); and Conclusions of Law 19, 20, 22 and 23 (pages 109-111 Appendix)*; the Court erred.

The recent *Tomos, Agreement* and *Proclamation* of 1970 have made clear that under Orthodox hierarchical principles St. Michael's *was* within the Metropolia hierarchy (Conclusions 98, 99 (pages 112-113 Appendix)) and thus no *transfer* of property could result, or resulted, from the Lower Court's Adjudication which the Pennsylvania Supreme Court reversed under misapprehension of the *Gonzalez* and the *Hull* Decisions.

For reasons that do not appear in its Opinion, the Supreme Court completely overlooked the fact (Finding 96,

* See also our References, on pages 8 and 10, of the Petition for Certiorari.

page 102 Appendix) that Appellees for all of 1963 (the first year of litigation) contended they were *independent* and without a hierarchy. In error, Justice Eagen wrote that Appellees "claimed" Patriarchal jurisdiction; but they asserted and claimed *autonomy* and *no* hierarchy *at all* until the Spring of 1964!

Thus, Appellants have not had their "day in Court" and will not *unless* this rehearing is allowed.

Nor, unless Certiorari is allowed on this Petition for Rehearing, will Appellants have had fair and proper application of the true legal principles of separation of Church and State, and the benefit of the guarantees of the First and Fourteenth Amendments of the U. S. Constitution.

Indeed, as pointed out in Reasons numbered 5 and 7 for granting Certiorari (page 16) the Pennsylvania Supreme Court failed to give Appellants due process *and* to accord equal protection of the laws when on the *very day* it rendered its decision in the instant case *without* referring to any fact, history, or the decision of highest ecclesiastical authority to which the matter had been carried, the Pennsylvania Court declared *St. John's* Church of Pittsburgh to be within the hierarchy of the *Roman* Catholic Church, *despite* the language of the Charter of Incorporation which established the Church as "autonomic".

In Pennsylvania, by these two Decisions, *Roman* Catholic hierarchs are accorded judicial reviews *beyond* civil charters (*St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 436 Pa. 243); but *Orthodox* Catholic Churches (as the instant case) are held to deserve only a *mere* perusal of the language of an old Charter (that is, the 1915 Articles of Incorporation) without reference to hierarchies. This is hardly "equal protection" under law.

Now that the two hierarchies have acted and consented on certain *All-America* Ecclesiastical rights and jurisdiction (just as they did *in 1955* for St. Michael's of Philadelphia) unless dependence on consents, cessions and releases

can be assured under law, there is a possibility and danger of further and extensive litigations, whereas allowance of Certiorari here and now will assure a just Review, a clarification of the nature and extent of judicial acceptance of hierarchical decisions, and bring a harmonization in Pennsylvania of the true application of the principles of *Watson* and of *Hull*.

Respectfully submitted,

IVAN MICHAELSON CZAP,
Attorney for Petitioners.

CERTIFICATE OF COUNSEL

I, IVAN MICHAELSON CZAP, Appellant's Counsel, hereby certify that the foregoing Petition for Rehearing is presented in good faith, not for delay, and is restricted to the grounds specified.

IVAN MICHAELSON CZAP.